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EDITORIAL

A Departmental Committee has recently been set up by the Home Secretary, under the Chairmanship of Viscount Ingleby, to inquire into the law relating to children and young persons. As its terms of reference include an investigation into the law and working of English juvenile courts, the Editorial Board has decided to devote the present issue to this aspect of the subject.

The juvenile courts, legally established in this country first by the Children's Act, 1908, and put on a broader basis by the Children and Young Persons Act, 1933, have on the whole been working well. Nevertheless, certain weaknesses in their legal structure as well as in the practical administration of the law have become more and more conspicuous and provoked criticism in recent years, and it is only appropriate that, after nearly half a century of their existence, a careful examination should be made of juvenile court law and practice. Such an investigation will have to approach the subject from many different angles, and this issue of the Journal, while in no way claiming to cover the whole field, presents an attempt to look at the matter at least from the points of view of representatives of the magistracy, of that comparatively new figure, the children's officer created by the Children's Act, 1948, and last but not least from the point of view of the juvenile delinquent himself. To place the discussion on a comparative basis, surveys have been added of recent developments in Germany and Switzerland.

Two of our contributors are juvenile court magistrates, one of them a Chairman of long experience in one of the London juvenile courts. Dr. Eileen Younghusband treats her subject largely from an angle which is all too often ignored, *i.e.* that of the customer, the recipient of juvenile court justice, and she does well to stress the old truth that the customer's idea of justice is often, and particularly in juvenile courts, widely different from that of those who dispense it. In her paper, as well as in Mrs. Cavenagh's, the feeling is given expression that the juvenile courts are at present placed

in a highly ambiguous position because their legal structure as modified criminal courts is bound to clash with the principal aim of their activities, which is to promote the 'welfare' of the juvenile. In Mrs. Cavenagh's words, 'a system of diagnosing and treating children's needs has been grafted on to one designed for protecting the public from crime by punishing the criminal', which, in her view, means 'to telescope together two procedures which may have no logical relation to each other and ought not to be so related'. While this may be too wholesale an acceptance of Bernard Shaw's antithesis of punishment *versus* reformative treatment, it has to be admitted that, as long as juvenile courts retain their present structure and as long as their findings of guilt (though legally not called 'convictions') can be included in the offender's criminal record for the rest of his life, very little can be done to modify the traditional attitude of the client so vividly depicted by Dr. Younghusband. The latter, apparently not altogether without certain doubts, finds herself able to give a positive answer to her question whether the present juvenile court does in fact fulfil a useful function which could not be equally well performed by other social agencies. Even so, however, she emphasizes the need for better training of magistrates and for some considerable modifications in the age range covered by juvenile courts as well as in their judicial form. Clearly, these topics are likely to occupy the members of the Departmental Committee more than anything else, and before reaching their conclusions they may do well to consider the position in a number of foreign countries.

From time to time, this Journal has published brief contributions from foreign experts on recent developments in juvenile court reform abroad.[1] In the current issue we cannot even attempt to do justice to the great variety of foreign laws on the subject, ranging as they do from the one extreme of the Scandinavian Child Welfare Boards and the Chancery Court-like American juvenile courts to the modified criminal courts of non-Scandinavian Continental countries. No doubt, the Departmental Committee will wish to make a comparative study of the most important types. To show the wealth of problems likely to arise from such studies we have invited contributions from two of the most prominent juvenile court experts of Continental countries which have recently produced new legislation or are on the point of doing so. Germany and Switzerland, while both adhering to the idea of a juvenile court as against the administrative solution of Scandinavian countries, show, among other points of difference, an important contrast regarding the lower age limit of criminal responsibility which is

[1] M. Chazal on France, Vol. III, No. 2, October 1952; Signora C. G. Romano on Spain, Vol. III, No. 3, January 1953; Johs. Andenaes on Norway, Vol. V, No. 1, July 1954, pp. 23 *et seq.*

fixed at 14 years in Germany and at 6 years in Switzerland. As pointed out by Professor Frey, this exceptionally low age limit of 6 can be understood only in connection with the wholly educational character of Swiss juvenile court legislation, where ' disciplinary penalties ' are very much the exception. Even so it might be argued, however, that the disadvantages of fixing the beginning of criminal responsibility at this very early age would seem greatly to outweigh its advantages and that the aim, stressed by Frey, of collecting the fullest information already on very young law-breakers for the sake of an early prognosis of persistent criminal tendencies could, given a suitably trained staff, be reached equally well by a non-judicial body. Inevitably, the adoption of a lower age limit of criminal responsibility at, say, 12 or 14 years will raise the question of an alternative to the present system, be it a kind of Chancery Court or an administrative agency with a court perhaps standing in the background to deal with disputed or otherwise particularly difficult matters.

Equally important to the Departmental Committee will be the issue of the upper age limit of juvenile court jurisdiction. In Professor Sieverts' paper a detailed account is given of the new German law and the beneficial results so far derived from the raising of that limit to the age of 21. One of his strongest arguments in favour of extending juvenile court jurisdiction is the more thorough exploration of the personality and background of the offender to be expected from such a change. There can be little doubt that the average adult criminal court, as at present constituted, and in particular the whole formality and publicity of a jury court, are not the best agency to deal with often very immature and backward adolescents of 18 or 19 years. No wonder then that in other Continental countries too, notably in Switzerland and Austria, as well as in the United States, there is a strong movement in favour of exempting, in some way or other, the adolescent offender up to the age of 21 from the full rigours of adult criminal proceedings. No easy solution can, however, be offered to this problem. Juvenile courts in this country are not, as they are in France and Germany, graded according to the seriousness of the offence and the nature of the penalties or other measures to be used in an individual case. Moreover, already the present age range from 8 to 17 years may be too wide for juvenile court magistrates, and to expect the same agency to deal with very young children and near-adults alike would be unwise. The name ' juvenile court ' would also be resented by the near-adult. Possibly a judicial body standing somewhere between juvenile and adult courts, perhaps a special division of the latter with a modified adult court procedure and specially qualified magistrates or an adolescent court on the model of the New York Adolescent Court or other American experiments might be the answer, also bearing in mind

certain recent proposals of the American Law Institute. Unless a satisfactory solution can be found of these fundamental issues relating to the very structure of juvenile and adolescent courts there is no firm basis for a realistic approach to all those technical questions of detail that will inevitably arise, many of them, as shown in Mr. Collis's paper, matters of considerable practical significance.

Of special interest to English readers is Professor Frey's criticism of the Anglo-American system of keeping the finding of guilt separate from the stage of disposal. If and when such a separation means—as it apparently often does in the practice of Swiss juvenile courts—that a period of probation is merely resorted to as a convenient substitute for a thorough study of the offender's personality and background this criticism would be justified. In English juvenile courts the period of remand between the two stages of the proceedings is, however, mainly used to collect better and more detailed information on the offender.

The Departmental Committee on Children and Young Persons

The terms of reference of this Committee, set up by the Home Secretary under the Chairmanship of Viscount Ingleby, are as follows:

To inquire into, and make recommendations on—

(*a*) the working of the law, in England and Wales, relating to (i) proceedings, and the powers of the courts, in respect of juveniles brought before the courts as delinquent or as being in need of care or protection or beyond control; (ii) the constitution, jurisdiction, and procedure of juvenile courts; (iii) the remand home, approved school, and approved probation home systems; (iv) the prevention of cruelty to, and exposure to moral and physical danger of, juveniles;

(*b*) whether local authorities responsible for child care under the Children Act, 1948, in England and Wales should, taking into account action by voluntary organizations and the responsibilities of existing statutory services, be given new powers and duties to prevent or forestall the suffering of children through neglect in their own homes.

DR. DENIS CARROLL

Readers of this Journal will have learned with regret of the death of Dr. Denis Carroll on 21st November, 1956. A full Obituary will be published in the April issue.

THE JUVENILE COURT AND THE CHILD

By EILEEN YOUNGHUSBAND (London)

The terms of reference of the Ingleby Committee potentially lay open to question the whole procedure, function and jurisdiction of the juvenile courts. It is to be hoped that in due time its minutes of evidence will be published, for they will form one of the most illuminating social documents of our day, casting light upon conflicting attitudes towards one of the social groups in relation to which feeling runs highest—that is to say, delinquent, antisocial and neglected children and their parents.

In all the welter of evidence which will be prepared, however, one of the most important groups of all will unfortunately remain silent. It is reasonably certain that no evidence, written or oral, will be offered by juvenile delinquents themselves or their parents. Yet they are the consumers of the service, the people at the receiving end, whose views as to the function and fairness of the courts are at least of some interest. No doubt their views will to a limited extent emerge obliquely in the evidence of others associated with them in one way or another in the operation of the juvenile courts and the various supporting services. It is important that this should happen; thus this article is offered as one such attempt to capture in a somewhat impressionistic fashion the rôle of the courts in the minds of those who stand on the other side of the magistrates' table. In order to do this it will be necessary to consider whether the attitude of enlightened magistrates administering justice in well-run courts is out of accord with the more primitive assumptions of young delinquents and their parents.[1] This will lead to a discussion of some of the many anomalies between judicial and treatment functions in relation to such children. This raises the further issue of whether there is in society a necessary place for a final impartial decision-making authority which also represents society's disapproval of certain socially harmful actions, protects others, and indeed often the young offender himself, from the consequences of these actions, and exercises a useful function in appropriately raising, canalizing or assuaging guilt, hostility and anxiety. This will naturally lead on to a consideration of whether, because of the present gap in our social services, juvenile courts are

[1] For the purpose of this part of the discussion children and young persons brought before the courts charged with an offence will be primarily considered. For convenience sake, the term 'child' will be used to include young persons. The terms 'court' and 'juvenile court' will be used interchangeably. Sometimes what is said applies to courts as such, but this article is concerned only with juvenile courts.

in danger of being twisted into family and child welfare agencies. Finally, the possibility of constricting the juvenile courts' jurisdiction if such a service were developed will be considered. Because this article does not embody research findings, but is only based upon one person's reflections in the light of experience, the first person will be used where it would be misleading to do otherwise.

From time to time common terms of speech will be employed in order to bring out significant assumptions which often underlie them. Thus the I.S.T.D. itself recently published a leaflet announcing a series of lectures in which it was said that 'the children who come before the Juvenile Courts, like the children who come before the psychiatrist, must all be treated as separate personalities.'[2] This gets square into a basic difference, because although children 'come before' courts they do not 'come before' psychiatrists. They go, or rather they are taken, to the latter because it is hoped that treatment will help to rectify some behaviour problem which they present, and thus bring about improvement in themselves and their situation. This is certainly not the usual expectation of the children who come before the juvenile courts, nor that of their parents. They tend to think that courts are necessary for others though not for themselves, and they probably all regard them as an evil to be avoided if possible. It is only desperation which drives parents to bring their children who are beyond control before the court. And certainly only the rare delinquent would wish to take shelter under its dangerous wing.

The juvenile courts are, then, in a major respect different from schools for maladjusted children, child guidance clinics, and the like, in the eyes of those who come before them. Here at the outset is a barrier, a difference in thought worlds, between those who serve in a modern juvenile court and those who come before it. For between what we, the magistrates, strive to be and what delinquents, particularly the most regular ones, think we are there for a great gulf is fixed. It is common to talk about the punishing attitudes of the courts fifty or a hundred years ago, the harsh sentences and the concentration on making the punishment fit the crime, as though these were wholly things of the past. But many of these attitudes, together with the fears, anxieties and hostilities which lie at the root of them, still live on at the present day in the minds of those who come before us. If we who sit in a present day court could see ourselves and the rôle we are cast to play through the eyes of the young offenders and their parents the picture would undoubtedly be a very different one from our own. For one thing, that picture would contain none of the light and shade cast by new knowledge about child development and the psychiatric aspects of juvenile delinquency and its

[2] Leaflet entitled 'I.S.T.D. Lectures: Society and the Delinquent', Autumn, 1955.

effects on the current penal system. Thus the picture in their minds is far closer than the one in ours to the old concept of the cruel, punishing court, meting out harsh sentences to make the punishment fit the crime. Perhaps this is one of the reasons why some of the things we say so obviously seem odd and confusing to them. There is another major source of misunderstanding in that, though they often appear unreasonable to us, they have in fact a much greater belief in the power of rational argument—particularly if applied to others—than do the more sophisticated of us. The father who demands that we should give his boy ' a good talking to and then perhaps 'e'll be'ave 'imself better. 'E knows if 'e don't I'm 'aving 'im put away ', is making a direct appeal to us to exercise the power of rational argument backed by the weight of authority. If to us, surveying father and his obviously emotionally disturbed small son, this approach is clearly doomed to failure, the result is none the less confusing to both father and child. They both had the same assumptions about the rôle of the courts, and we have failed to do what in their view could be legitimately expected of us.

Every now and then, in what delinquents and their parents say to us, we get a glimpse of their idea of the court's function, of the rôle in which they cast us. Very often their attitudes are not at all merciful ones. They believe in punishment; that is to say, they believe that courts are there to find out things which, as applied to themselves, they had much better not find out, and then to punish. They believe, with Bernard Shaw, that ' to punish a man you must injure him ', but they do not go on to say with him and us, 'to reform a man you must improve him: and men are not improved by injuries.' The whole idea of reform, of consciously desired change, as a possible and desirable goal which brings its own reward in greater well-being is something which is usually alien from their thought—except, of course, the reform of other people's behaviour in line with their own desires. What they do understand, as their fathers did, is making the punishment fit the crime, an eye for an eye and a tooth for a tooth. If you are unlucky you get fined or sent to the attendance centre; if you are very unlucky you get ' put away '; if you are lucky you get ' let off ', that is discharged or put on probation. ' Being given another chance ' does not mean that the form of treatment must be more adequately related to the needs of the situation, but to be allowed to go home in the hope that if ' 'is father gives 'im a good 'iding ' all the real problems can be ignored.

Here, then, in the juvenile courts are two sets of people talking to each other from within two different worlds, the magistrates and probation officers on the one hand and the children and their parents on the other hand. It must be remembered, too, that in addition to differences in fundamental assumptions, this difficulty of communication also often arises because

we magistrates unfortunately use long and unfamiliar words from our more extensive vocabulary. This causes further confusion in a situation which is in any event fraught with tension, thus often giving to the court appearance the half unreal quality of a dream. Only occasionally does this come home to us, as it did to me recently when a boy whom I asked to tell me what he thought probation meant began painstakingly, ' cremation is . . .' These difficulties of communication, added to by the incomprehension caused by anxiety, merely enhance the deeper problem of the difference in the minds of the two parties about the rôle which the juvenile courts should fill.

Increasingly in the minds of enlightened authority that rôle is a benevolent, reformative one. We should seek, with the aid of psychiatrists, psychologists and social workers, to understand the individual child's life history and what at this point in time made him commit a delinquent act. In the light of this understanding we should aim (for therapeutic reasons) either to allay or mobilize guilt, to lessen family stresses and to bring about beneficent changes in his environment. This is highly desirable in the view of many of us. But it is very different from what the young offender and his parents expect of courts; for their expectations have roots in the expectations of mankind ever since courts began. The rôle of courts throughout history has been to find guilty, to condemn and to punish. The courts thus symbolize in the minds of many the punishing gods, the avenging fates, the ' bad ' parents. These are the long centuries of tradition, the thing laid down in our historical memories, the inner fantasy turned into external reality, which is expressed for many of us in the sudden pang of fear when the policeman turns round and looks at us. Thus two worlds meet but do not mingle as we well-intentioned magistrates, full of modern knowledge, sit behind our table in the juvenile court. For before us stands the ancestral child to whom, as we say the well-worn and significant words, ' we find you guilty of this offence ', we are the avenging gods. It may well be objected that, quite on the contrary, the trouble with many delinquent children is that they do not feel guilty at all. They are, that is to say, deficient in that super-ego development which leads the normally developing child to begin before the age of criminal responsibility to seek good and eschew evil on the lines favoured by father and mother. Trouble may arise, as we know very well, when the parental concepts of 'good' and 'evil' differ markedly from those of society at large, more especially from those of the lawmakers. This is all very true, but it does not affect the essential argument. The concept laid down in the bloodstream of the avenging justice is there whether or not the offender actually feels guilty. This is not to suggest that the child who feels extremely guilty, who has the avenging justice gnawing away inside him, does not suffer very much more than the comparatively guilt-free child, who fears only the

unpleasant things which external authority may do to him if he is caught.

Again and again in the remarks of parents and children it is apparent that their idea of justice is of punishment as the restoration of a disturbed balance, paying off a debt in appropriate coinage. This concept of reparation is in fact synonymous with that embodied in much legislation. ' 'E's 'ad 'is punishment, ain't 'e? ' ' 'E didn't do no worse than the others; why should 'e be put away? ' That is to say, in their minds the court's decision ought to be related to the nature and gravity of the offence and not to the nature and gravity of the offender's behaviour difficulties. ' I've told 'im that if 'e does it again I'm 'aving 'im put away.' ' It's 'is first offence, you can't put 'im away for that.' For this same reason there is no demur about the justice of some restitution from pocket money or earnings for stolen goods or damage done. You didn't get away with it, you broke the eleventh commandment, so now you've got to pay up, and that's fair enough. This concept of a relation between the offence and the gravity and nature of the sentence is rational; indeed, it is embodied in the law and shared by magistrates, so long as children are brought before courts charged with specific offences and are, upon being found guilty of these, subject to the appropriate penalties which the law provides. The language used in the preceding sentence brings out the confusion in the function of the juvenile courts which are at the same time required to ' have regard to the welfare of the child '.[3] The point for the purpose of the present discussion is that the attitude of parents and their children is perfectly logical if courts exist to find guilty and punish. Their picture is of the figure of Justice, whose scales have been tipped in one direction and must be balanced true again. Justice also holds a sword in her other hand, and this sword may fall justly, but it falls none the less. There is justice in an eye for an eye and a tooth for a tooth—paying back to Mrs. Brown that money you pinched out of her gas meter. That's fair enough, but to be caught stealing something worth a shilling or two from a shop and be put away in an approved school? ' There's lots of others done worse than 'im, ain't there? Why pick on 'im? ' Why? Because you are one of a large family, your mother is apathetic and broken down in health, your father is in and out of prison, and you are running wild in the streets. But how shameful is the court's decision! Those things you stole were worth almost nothing; it's your first offence and you're to be put away for three years. And in what frame of mind will you, the boy who needs so much if you are not to perpetuate the vicious circle in your generation, go to an approved school if we send you there? Even if we do so, there is no certainty that this or any other treatment will meet your needs. For, as Margery Fry once said, ' You can't give children love by Act of Parliament '.

[3] Children and Young Persons' Act, 1933, s. 44 (1).

Here, then, is the dilemma in relation to the judicial and treatment functions of the juvenile courts. We who are connected with the courts in various ways are so familiar with this dual rôle that perhaps its oddities do not always strike us. How strange it would be, though, if we translated into terms of medical treatment this concept of the relation between the offence and its equivalent punishment. ' She had to have a major operation and they only kept her in for two weeks; while I had nothing but a little patch on the lungs and they kept me there for months.' It would be odd indeed to have to pronounce at the time of diagnosing almost any malady exactly how long the treatment should last; while at the same time having only the haziest idea, based largely upon conjecture by untrained people, what the malady was and what the effect of the prescribed treatment was likely to be; and finally, in spite of these substantial disadvantages in diagnosis and prescription, being forced to come to a decision about appropriate treatment, which it thereupon becomes obligatory upon the person concerned to undergo—on pain of further and more drastic treatment, because failure to respond to it will demonstrate, not that the treatment was wrong, but that the person undergoing it is at fault. But by and large the law is based upon the assumption that the lawbreaker could have refrained from breaking it and is therefore guilty of an offence; while medical treatment, on the other hand, is based upon an attempt to understand causation and to prescribe appropriate treatment. This assumption is the new wine which is proving so heady in the juvenile courts.

At present, of course, we know comparatively little about the precise diagnosis or effective treatment of those complex behaviour disorders and environmental maladjustments which sometimes manifest themselves in delinquent behaviour. In addition, there are still fewer people who like difficult children and can tolerate their behaviour, who are, moreover, trained to give treatment with systematic understanding of what they are doing and to study the results objectively. This is especially true of the staffs of remand homes and approved schools and hostels. But already what is actually known and can be applied enlarges the gap between these crime-punishing and person-treating aspects of the courts' function. This becomes particularly clear if we consider the actual court appearance from the judicial and the treatment angles. From the first, the judicial point of view, the offender is being judged by his peers, fellow-citizens who have no axe to grind and who have sworn to administer justice ' without fear or favour '. He is in the court in any event because an offence, the commission of an objectively verifiable specific illegal act, is alleged against him. He is innocent unless he is proved guilty, and he receives all the protection of British justice. If, for example, it is possible that when he took the bicycle

he meant to put it back, then that is not stealing and the case is over, no matter how clear it may be that he and his family are in need of skilled help about him in relation to his personal and social problems. Moreover, everything that is said about him, whether or not he is found guilty, must be said in open court in his presence or that of his parent. Similarly, the gist of what is contained in written reports handed in after the case is proved must be read out so that he and his parents may have the chance to rebut anything with which they do not agree. In other words, the assumption is that stigma attaches to being found guilty and punishment will follow from it, therefore he must be given every safeguard to protect him from the court being able to concern itself with his affairs. Once again, this is entirely logical if the purpose of the courts is to judge and upon finding guilty to punish. But if it is also the duty of the juvenile courts to have regard to the welfare of the offender once the case has been found proved, then much of the procedure appears to be very strange from the point of view of understanding causation in order to prescribe treatment. Considered from this angle, we might regard a court sitting as a very odd diagnostic interview, conducted by lay people in most unsuitable circumstances and with a number of conditions laid down which effectively prevent them from getting all the material necessary in order to arrive at a reasonably accurate diagnosis. These lay people are in any event committed to telling the child and his parents, in the presence of the Press, the content of the material available to them, although to do so may sometimes in itself aggravate the malady.

Common sense seems to suggest, though, that there is something wrong with the extreme contrast presented above. If so, is this because our existing knowledge about causation and treatment, as well as the facilities available for applying what we know, are both too patchy at present to enable us to handle the delinquent and other anti-social behaviour of children by means of some form of psycho-social treatment service? Is the whole issue in any event solely a matter of trying to increase knowledge and transmute it into skill in practice? Will people in future centuries think us as barbarous in our treatment of delinquents as we think those who chained, beat and ridiculed the insane? Or does part of the dilemma go deeper than this, down into ideas about condemnation and restitution deeply engrained in us from our earliest experiences and therefore part of our cultural assumptions? To ask this last question is to ask whether the courts do in fact perform a useful function in society which is necessarily different from, though it should be complementary to, the function of treatment agencies as these are usually understood.

It is unfortunately true that when we do not understand or know how to remedy we condemn, push out of the way and punish. This is particularly

true if we feel fear or guilt about particular kinds of people. There but for the grace of God go I, in that insane or delinquent person. Although the law and morality are not synonymous with each other, there is yet a heavy moral load attached to breaking the law. The very words ' found guilty of an offence ' attest to this; while to be found to be suffering from (the expression again is significant), for example, asthma renders a man a subject for compassion rather than condemnation. But already we know that the root causes may not have been dissimilar in two people who ultimately appeared the one in a court and the other in a hospital. This implies a suggestion that we continue to find guilty, condemn and punish those who break whatever may be the law at any particular time and place because we ourselves are too ignorant and too full of righteous indignation to know what else to do. If so, how particularly barbarous this practice will appear in relation to children. Even now some other countries regard with surprise our low age of criminal responsibility. We ourselves have been increasingly questioning certain retributive forms of punishment during this century; for example, birching passed back into history some years ago, though some still mourn it. We begin, too, to question some of the assumptions about rational behaviour and freedom of choice on which much of our law is based.

These and other considerations pose the immensely difficult question of whether the logical end of this process is, so far at any rate as children are concerned, that the court should be swallowed up in the clinic, with a family and child welfare service as the first deep line of defence. The essential problem is whether such treatment services could adequately meet the total needs of the situation. In any society where large numbers of people live together there are bound to be rules or laws for their common convenience. The vast majority will keep these rules, but a few will not. When someone breaks one of these rules society must take note of it; that is to say, must take some kind of action to restrain that person and to protect others. This means in effect that there is no escape from the exercise of authority, the ultimate sanction of coercion, used by society against the individual, whether it be to prevent him from roaming the country with smallpox, endangering the lives of himself and others because he is suffering from schizophrenia, trafficking in women and children, or stealing someone else's property. However much we may in time succeed in narrowing the area of its operation and improving the ways in which it operates, the need to use authority, in the last resort to make binding decisions as between one person and another and between the individual and society, will still remain. If it is the treatment agency which exercises this final authority, it is arguable that it would have far too much power in its hands over against the individual citizen. Moreover, however skilled it might be, it would still be subject to human

fallibility, and ever prone to forget that ' power corrupts and absolute power corrupts absolutely '. One of the chief social functions of the courts, then, is to be impartial tribunals, to have no axe to grind and therefore to be able on occasion to protect the small individual against the administrative leviathan. It is presumably one of the aims of a democratic society to tolerate a wide range of behaviour, to leave people free to make their own decisions about their lives, to help them to do so more effectively if they desire this help, and only under certain defined conditions to impose help upon them or to make decisions on their behalf. This is not, of course, to deny that some socially inadequate and emotionally immature people may be helped to continue to function socially and do so more effectually with the help of benign authority. But it also means that in the interests of the liberty of the individual there must be an impartial tribunal to which the small individual and the public authority may or must come for a final binding decision about the individual's way of life to be taken.

These considerations seem far removed from these dark feelings of fear, guilt and anger with which generations of children and their parents have come before courts. Much of the core of the problem is, of course, centred on this whole issue of fear, guilt and aggression, for here is something far more complex, going far deeper into the strange, hidden layers of our nature than any consideration of the rational use of authority. Perhaps we may begin to see a glimmer of an answer to this if we approach it in a rather simple common sense way by saying that guilt, fear and aggression are there anyway, or at least that it is extremely awkward, even pathological, when any one of them is lacking. It is equally unfortunate when there is too much of them. The healthy child of good parents learns as his ego develops to use them constructively instead of being dominated by them. Similarly, there is probably a place in society for some specific means to regulate both their flow and their expression, to define acceptable and unacceptable behaviour; to help the individual to feel appropriately guilty or afraid in relation to the external world; and thus to set some barriers against aggression becoming soured into hostility. The courts may be thought of, then, in one aspect as the mouthpiece through which society repudiates certain actions and expresses disapproval at their having been committed. But at the same time that the court arouses and plays upon fear and guilt, it also sets limits and bounds to them. Indeed, in being the parental figure which judges but does not condemn, it may often be wiser and more merciful than the real parent. This in itself may be an educational experience for both parents and children. This guilt-assuaging, limit-setting function of the courts is an important one for mismanaged children. This does not apply, of course, to children with a compulsive need for punishment whose problems we may unfortunately

only aggravate. The courts may, however, play a constructive rôle in relation to those children whose parents swing violently from cajoling to cuffing, and who therefore have little framework of security to protect them from the dark terrors and raw emotions of childhood. The same considerations apply to some extent to the child of rigid or rejecting parents. For all of these it may be that the rôle of the courts is to represent authority, the parent, that which disowns certain actions but seeks to understand, believes in and wishes to help rather than condemn those who commit these acts.

Considered thus, a function of the courts is to be the focus for, to direct to itself and away from the actual parent-child relationship, some of the feelings of guilt, hostility and fear which are poisoning them. It is often only when the court has been the ' bad ' parent that it can act like the ' good ' parent. Related to this is the important function of seeking to arouse fear and guilt in some and to allay these in others. To arouse fear and guilt is a traditional purpose of courts which has usually been exercized far too unselectively. Their part in assuaging or deflecting guilt, fear and hostility is tacitly accepted so far as the juvenile courts are concerned, but perhaps not often discussed or deliberately used with this end clearly in view. Yet it often happens that if we lessen a parent's guilt about his own parental inadequacy and his fear of social condemnation, at the same time letting him see that we understand the real difficulties he is facing and think hopefully both of him and his delinquent child, we may reduce the tensions in both of them. Sometimes we may do this by means as simple as a matter of fact attitude, an unruffled courtesy, an implied suggestion that this situation is not uniquely terrible, that help is possible and that we intend to offer it. Where there is a real lack of guilt feelings we may perform the same function, but from the opposite end, so to speak. On the one hand, we limit guilt and fear, but we also limit acting out anti-social behaviour. In so far as we do this effectively, it is largely because to those to whom we speak we are the voice of society. We are authority reassuring that things are not so bad, so blameworthy, as they seemed. Or else we may be saying in effect that this is the boundary limit of behaviour which is permissible in the community, and that to go on crossing it will have to mean being taken out of the ordinary community for a time.

What this seems to come to, then, is that a major social function of the juvenile courts is to be the ultimate boundary-setting authority for both parents and children. This means to act in the same way in the use of discipline and authority as would the wise parent. To do so is to disown the use of condemnation and retributive punishment. It also necessitates the use of guilt, fear and aggression so that they may be turned outwards realistically to real situations. In addition, it is essential to recognize and to

work with the highly ambivalent feelings towards each other and the juvenile court of those who come before it; indeed, of those on both sides of the magistrates' table.

It may seem that this discussion is equally far removed from the dark avenging gods and from the day to day performance of us very ordinary magistrates. But this is really not so. The dark avenging gods are there in any event, deep in the recesses of the minds of all of us, and we have got to come to terms with them somehow. We have done so in the past by courts which condemned and imposed all manner of cruel punishments; that is to say, we have made the fantasy in the mind come true in the external world. Now I would contend that one of the things which we are trying to do very gropingly, perhaps intuitively, in our present-day juvenile courts is to turn the dread punishing gods into the wise and good parents, who desire to help and nurture the child rather than to injure him for wrongdoing. This may seem like a piece of special pleading, an attempt to preserve an outworn institution by some far-fetched analogies. It would certainly not be denied that other authority figures in the community—priests, doctors, teachers and others—already fulfil this function in some measure. It is also not contended that these powers should continue to be exercized by the juvenile courts for the same wide range of children as at present, or in the same judicial form. Later on in this article the case for a substantial constriction of the courts' jurisdiction and a change in its form will be argued.

There is another related side to this whole problem, in that we magistrates are most of us very ordinary people; that is to say, very much unlike avenging gods or even wise and loving parents. That is part of the difficulty because, without always realizing it, we do get a good deal of satisfaction out of playing one or other of these parts. We either want to teach the young hooligans a lesson they won't forget in a hurry, or else to assure them that we aren't so bad really and to bribe them to like us with holidays and presents from court funds. We long for the glow of satisfaction which comes from being the fairy godmother who waves her magic wand and restores the lost child to his loving parents. And yet a perverse fate so often casts us in the eyes of the child for the part of the wicked ogre snatching children away from parents who would otherwise love and cherish them. Sometimes, however, we get a glimmer of understanding that, if the child feels in that way about us, it may help him to defend himself from the wholly shattering realization that it was his own parents who rejected and got rid of him. If we are the wicked ones who could not be resisted, then some fantasy of his own parents as good and loving may live on to nourish him emotionally. In these ways it may perhaps begin to dawn upon us little by little that these two rôles of the avenging gods and the kind parents are not really two but

one. We cannot disown the darker side of that rôle because in the nature of things we are cast to play it. The most we can do is to try to understand it and to use it in ways which may be helpful to the child. This touches on our own attitudes and prejudices. It involves us in facing and trying to understand the reasons for our dislike for any particular type of offender, of our sentimentality towards others, of indignation with children for their treatment of their parents or parents for their treatment of their children, of being riled by the cussedness of some adolescents, of feeling that the moral law will fail unless we vindicate it. To be of those who judge, who enforce the law, touches on some very weak spots in all of us, just as some kinds of offence get us on the raw; while conflicts between parents and children find none of us immune from the effects of our own conflicts. To know ourselves, then, to get some beams out of our own eyes is the first, though curiously disregarded, requisite for sitting in judgment on others. We have this need in common with psychiatrists, social workers, and others who work with people, though our functions are different. If we cannot achieve this freedom from our own irrationality, it is very unsafe to trust us with the sword of Justice, for the chances are that we shall strike blindly—and Justice is not blindfolded in order that she may make hit or miss decisions. If it is necessary to have institutions like courts whose decisions are binding and enforceable against the will of those concerned, then the people who arrive at those decisions must be given every possible help to make the right ones. They should be trained to do this, and they must also be able to accept—and paradoxically to refuse to accept—that sometimes there is only a choice between two wrong decisions. At the same time there is never in the courts the possibility of refusing to make a decision at all, for every alternative, including even a decision to adjourn the case *sine die*, is in fact a decision which is also a diagnosis and a prognosis about the offender.

This amounts to saying that we who sit in the juvenile courts are authority personified; that authority there must be; and that it can itself in its nature be used constructively as well as destructively. If this is so, then there is not necessarily an inherent dichotomy between the understanding, kind, scientific treatment centre and the punitive, condemning legalistic court. But how about that other division, the gulf which separates us and our good intentions from what the defendants think about us? There are two inter-related means to bridge this. One is the long slow change over the centuries in ' man's inhumanity to man '. In this we have made some progress; for example, by replacing the family blood feud by impartial justice administered by courts, and by abolishing the death penalty and imprisonment for children. These changes after all only came because the majority of people supported them. The other more direct approach is by modifying

the attitude of young offenders and their families, thus narrowing the gap between their assumptions and ours. Sometimes a good deal can be done by the magistrates themselves. I would contend, for example, that the parent who, while the chairman is speaking to the child, winks at the magistrates from behind the child's back, or the boy or girl who impulsively shakes hands before leaving the court, have both begun to grasp the relation between authority, compassion and reform. The police are there some time before we appear on the scene, and they have done much to help children and their parents to understand the meaning of benign authority. Then, later, practically every child who comes before the juvenile courts has a contact, whether fleeting or spread over years, with a probation officer. It is the probation officers who, more than anyone else, must reconcile these two functions of treatment and authority—the clinic and the court. If we magistrates embody pure authority, that which judges and makes binding decisions, it is they who help the offender and his parents to come to terms with each other and with society, and to find greater freedom for growth and initiative within the bounds and limits which society imposes than by overstepping them. I would contend indeed that one of the basic functions of probation officers is, through the use of casework methods, to help children and their parents to shrink the avenging gods to their proper size, to see in the probation officer not only power to be feared and hated, but also the wise and good parent. That is to say, someone who accepts the necessity of discipline and authority, but who uses them with understanding for the individual and his feelings, in order to foster his growth rather than to secure rigidly enforced conformity.

Even though juvenile courts can be used in this way, some of the same objectives could be secured by other and better means. In particular, it is hard to justify our practice of bringing children before courts on criminal charges. Most of the problems of reconciling punishment for the commission of an offence with treatment of the offender spring from these criminal charges, which are in fact condemnation for having committed an unlawful act. The position is very much more straightforward in care or protection or beyond control cases where the focus is upon the child in a total situation which is held to require society's intervention to protect and control him. From the start the emphasis in such cases is on the helping activities of this authoritative decision-making body rather than upon its guilt-finding and sentencing aspects, which accord so ill with our growing humanity towards children. Even if major changes were to come about in the courts' function, it would still not be desirable that they should expand into a rather peculiar family and child welfare agency. This latter could easily happen at the present day, *faute de mieux*. For example, probation officers now give that casework

help in truancy cases which ought to be available much earlier through the local authority service. It is a common experience that many children come before the courts who need not have done so if there had been a family and child welfare service available to help them and their parents at an earlier stage. In the present very limited state of our knowledge about effective alleviation, treatment, prevention or cure of family disharmony or breakdown, it is all the more necessary that help should be available as soon as possible, when there is a greater chance of success. Yet again and again by the time a case reaches the juvenile court it is too late to do more than alleviate the damage which has occurred to the child. This is particularly true in beyond control and care or protection proceedings involving adolescents. Often these boys and girls and their parents would have been ready to accept help based upon understanding of their problems if they had known where to go for it. But they do not know where to go because there is nowhere to go.

The strange social myopia which prevented us until 1948 from setting up a public service for children deprived of a normal home life still prevents us from seeing the necessity for a family and child welfare service. Fortunately we are now beginning to concentrate our attention less on particular deficiencies from which people suffer and more on the person himself who has the deficiency or need which calls for social action. This in relation to children clearly involves a concern with them in their family and community setting, and with the provision of such services as may serve to strengthen family life. This must inevitably lead in due time, so it would seem, to the provision of a family and child welfare service. Such a service would concern itself not only with ' problem ' families, but with any family undergoing a period of stress, whether socially caused or due to internal strains, which called for skilled help of one kind or another to prevent or lessen emotional and social damage, more especially to the children. This service should be in a position to discover or to have referred to it symptoms of breakdown at an early stage; it should then be able to offer help on the basis of strengthening initiative and responsibility rather than imposing authoritarian solutions or ' warning ' and ' admonishing ' parents and children. It would seem reasonable to hope that if this were a universal local authority service with an adequate and well-qualified staff it would take care of many children who at present come before the juvenile courts. They would thus be saved the stigma and fear inherent in a court appearance. This naturally raises the question of whether the court's jurisdiction could then be substantially narrowed; for example, by raising the age of criminal responsibility to the school-leaving age. This would only be feasible in the present state of public opinion and of our knowledge about the causation and treatment of juvenile

delinquency if the present care or protection provisions were broadened, so that children who had committed what would otherwise be delinquent acts could be brought before a juvenile court if it was in their interests or that of the neighbourhood to do so. This would place what are at present criminal actions on very much the same footing as the present position in regard to 'sex delinquencies' committed by those under seventeen. It would also eliminate some of the procedure which confuses the child who pleads not guilty. Strong arguments have also been advanced from time to time for raising the age for care or protection proceedings to eighteen. There is also very much to be said in favour of extending the upper age of the juvenile court's criminal jurisdiction to eighteen, or even later to twenty-one. It would clearly be undesirable that the full range of its clientele should appear in the court precincts and mix with each other on the same day, but this difficulty could be surmounted by the court sitting on different days, or at different times on the same day, to hear different types of case involving children and young people of different ages.

It would, of course, be essential to maintain freedom of access to the courts in order to prevent the family and child welfare and other services from acquiring too great power over people's lives. We are steadily, though slowly, gaining greater respect even for socially inadequate people and for their right to be helped to make their own choices within certain wide limits, rather than having these imposed upon them by others. As this attitude grows it would be hoped that the family and child welfare and other services would work with rather than 'for' people and thus that many necessary decisions would be jointly reached. There would, however, be times when this did not happen. At that point either party should have easy access to the court.

If there were a general family and child welfare service which also of necessity concerned itself with matrimonial disharmony, there would be a very strong case for ending the present separation between the juvenile and domestic proceedings courts. If these two were amalgamated to form family courts we should then have a coherent system in which, if adequate supporting services were available, use could be made of increasing knowledge in this whole complex field. The function of the courts would be preserved as impartial tribunals making decisions which are binding; that is to say, exercising the ultimate sanction of compulsion with all the necessary safeguards that that necessitates. At the same time they would become more fitting instruments than they are at the present time for the expression of the community's best and most enlightened aspirations about the treatment of anti-social behaviour by children.

JUSTICE AND WELFARE IN JUVENILE COURTS

By W. E. CAVENAGH (Birmingham)

As Miss Fry has said, ' Perhaps the concentration in these courts on the welfare of the individual has tended a little to obscure, in the public view, their essential nature as part of the national defence against crime ',[1] and there are signs of a growing confusion over the function of the courts, which in some quarters now appear to be regarded as a kind of diagnostic clinic through which treatment for a variety of mental, physical, emotional and social disorders may be secured or enforced. The true character of the juvenile court is best observed when it is looked at as a slightly modified version of the adult court rather than as what it is not—an *ad hoc* device for furthering the child welfare provisions of the post-war welfare state. The modifications are sensible and well designed to make the juvenile court a more suitable place for the trial of a child than the ordinary courts must have been in the past or would be to-day, but the system remains one designed originally for dealing with adult criminals and is not entirely in line with the needs and capacities of children in trouble.

The requirement of the Children and Young Persons Act, 1933, section 47, about a separate court may mean using a room which is not suitable as a court at all. Informal arrangements and procedure in a small or awkwardly arranged room containing twenty or more people, almost all strangers to him although entitled to be there, are much more confusing to a juvenile defendant than the same proceedings and numbers in a large court room. It is also easy for the proceedings to get out of hand, so that the rules of evidence may not be observed or the juvenile may be intimidated by the proximity of hostile witnesses.

It is difficult for the child to know who are the judges, where for example everybody is round a board-room table in a smallish room, especially in view of the large part often taken by the clerk in such circumstances. Some drawings done recently by senior boys in a remand home after returning from the courts showed this confusion clearly. The magistrates were correctly sited, drawn and labelled, but in addition the clerk was in several cases labelled ' the judge ' and it seemed from some of the accompanying essays that it was ' the judge ' who heard the case and made the order. These boys

[1] M. Fry and C. B. Russell: ' A Notebook for the Children's Court,' The Howard League (revised 1950).

were all at least fourteen years old, but with a mental age several years lower.

Whilst the disqualifications attaching to a conviction for felony have been removed under section 100 of the 1908 Act, as far as the law is concerned, this is not the end of the story for the child against whom a charge has been found proved in the juvenile court. If he should appear in the ordinary courts on any future occasion, his previous conviction will probably form a part of the answer to the question 'Any record?' before the sentence is passed. If he applies for employment to some of the larger employers or employing bodies, he may be asked the direct question, possibly in writing, as to whether he has ever been convicted of an offence. His alternatives are to lie or to admit. The Warden of one of the best-known remand homes states that he is quite frequently 'phoned by some employer or other and asked to give a reference for one of his former charges.

The legal presumption that a person between the ages of eight and fourteen does not know the difference between right and wrong might as well not exist in some courts, as guilty knowledge seems to be assumed from the fact that the defendant has admitted to doing the thing with which he is charged. The frequency with which the defendant is later found, from the school report, to be mentally retarded is an argument for paying much more careful attention to this point. The modified wording is on the whole adequate to the child's understanding and avoids the difficulty that to a child 'guilt' is not a matter of fact, but of feeling about a fact, and he would otherwise on occasion plead 'not guilty' to things he admitted having done.

The informal atmosphere and arrangements of the juvenile court, in addition to raising the problems already described, throw much more responsibility for the conduct of the hearing upon the Bench if it is to be obvious to the child, as it ought to be, and to all others present, that the judges hearing the case are the magistrates and not the clerk. The magistrates must be both confident and really well versed in procedure if the clerk is not to dominate the picture. This takes a good deal of practice which comparatively few provincial juvenile court magistrates are able to get, and is undoubtedly a major reason why the London juvenile courts seem to be so outstandingly well run in comparison with some of those in the provinces.

The method of appointment to the juvenile Bench in the provinces restricts the choice to persons already on the adult Bench, many of whom may have been appointed for reasons which bear no relation to any question of qualifications and aptitude for dealing with children. The choice is therefore not always a wide one. The Home Office has attempted to give guidance as to the nature of the 'special' qualifications needed,[2] but it is not so easy

[2] Home Office Circular 179/1949, 27th August, including quotation from the Report of the Royal Commission on Justices of the Peace, 1948.

to find reliable indicators of the ' real appreciation of the surroundings and way of life of the type of child who most frequently finds his way into the juvenile courts '. Employers of juvenile labour, youth leaders, and other people in similar positions are not always *ipso facto* the best choices, since the regular young worker or youth club member seldom figures as a defendant in the juvenile courts. There is now a good deal of detailed knowledge about children, their emotional life, personality development and capacities at every stage. But this kind of knowledge is largely confined to the best teachers and social workers. Magistrates do not have it merely because they are magistrates, but only if they have had some relevant experience or training. Many people do know these things intellectually, but that is different from knowing them operationally, so to speak. Child defendants, especially those described in the school report as backward, are often highly suggestible [3] in court, and are therefore exposed to certain risks if the magistrates are not aware of their characteristics. After finding a charge proved, the Bench may talk confidentially with the child in an effort to find out more about his attitude to the offence. In an informal situation it is very easy for questions to be put, with the best of intentions, in a form which suggests a particular answer, e.g. ' You went into the shop to see what you could pick up, didn't you? ' Many children will nod corroboratively at this point although they have just said: ' I didn't mean to take anything. I just did it suddenly ' in reply to ' Whatever made you do such a thing? ' which may be described as an open-ended question. The child does not realize the possible effect of such an admission upon the content of the order about to be made. The magistrate may not realize that the child is simply doing his best to co-operate by giving the answer which seems to be expected.

A further handicap to the delinquent child in the court situation is that in many instances his awareness on these occasions seems to be so highly selective, so ego-centrically focused around himself [4] and his predicament and what is to happen to him in the immediate future that he is actually incapable of receiving anything which may be said to him by the Bench that does not appear to him to bear directly upon these points.[5] He seems like any other little animal to hear only the tone, and to try to deduce from it alone the intentions of the speaker. He does not hear any words except those pronouncing the content of the Order. After the Order he is again involved in his own relief or anxiety related directly to the facts of the situation. He

[3] Cf. S. and E. Glueck, ' Delinquents in the Making,' New York, 1952, p. 132.
[4] Apparently typical of delinquent personality in other circumstances also. Cf. S. and E. Glueck, ' Delinquents in the Making,' New York, 1952, p. 134.
[5] *Ibid.*, top of p. 134.

is not interested in advice or opinions from the Bench. It is usual for a certain amount of admonition or encouragement to be offered from the Bench in the hope of helping the child; but, having a suspicion that the situation might be somewhat as above, the writer made a practice over a short period of calling at the remand home, after an interval of two days or so from making an Approved School Committal Order, and talking with the boy. It was a salutary experience to find that such boys hardly ever knew that anything whatever had been said by the Bench, or even that they had ever set eyes on their visitor before. C. A. Joyce [6] also mentions that the boys of his senior approved school ' do not, on the whole, remember very much of the Chairman of the Court or of his homily '. Dr. May Pearce, talking recently about a group of senior approved school girls amongst whom she was doing psychiatric work, noted that they retained no impression of any kind relating to the magistrates.[7] An educational psychologist [8] to the remand homes remarked briefly that the boys seemed only to have seen some vague shapes with no faces. They had no recollection of anything being said by the shapes. In these circumstances, in spite of the informality of the occasion, the magistrates' opportunity of getting into really fruitful communication with the children would certainly seem to be rather more limited than at first sight appears, or seems to have been envisaged by the pioneers of the juvenile court system.

Juveniles almost always admit the charge in court, since they have usually been caught in the act, or have admitted it to the police following betrayal with full circumstantial details by a close but dim-witted friend, a co-partner in the enterprise. That part of a court's work, which consists of deciding on the evidence whether a defendant is guilty or not, is therefore at a minimum in the juvenile court. On the other hand, the decision as to what should be done with the defendant is even more important in this court because of his youth and the bearing of a wise decision upon what might otherwise develop into a criminal career. The defendant's view of the probabilities is strictly related to legal ' justice '. He has a scale running from a fine on his first appearance through probation to a period in a remand home and ending up in the approved school. There is considerable discussion about the place of individuals on this scale. The discussion is realistic, the forecasts err on the gloomy side. There is usually no suggestion, certainly none amongst the younger boys, that any considerations other than justice on the one hand and mercy on the other enter into the decision. They at least are quite clear about the nature of a court.

[6] C. A. Joyce. ' By Courtesy of the Criminal,' 1955, p. 28.
[7] Dr. May Pearce, verbal communication, 1955.
[8] Mrs. D. MacCraig, verbal communication, 1956.

The clerk to the court too has something similar in mind, but in a more modified form, with ' justice ' setting the limits of ' welfare ' as it were, and a strong leaning towards equality of treatment for the same offence.

The door to inequality of treatment is, however, fairly opened to the Bench by section 44 of the 1933 Act—' every court shall have regard to the welfare of the child '. The section goes on to say ' and shall in a proper case take steps for removing him from undesirable surroundings and for securing that proper provision is made for his education and training '. It is for the court to decide, however, what is a proper case. On the one hand there are the nature of the charge, and the defendant's record; on the other the undesirability of his surroundings. As long as the court remains a court of law a child will not often be removed from even the most undesirable surroundings, if the charge against him is simply and solely a first offence of a minor character. Where, however, the situation suggests the possibility of removal from home further reports are often asked for.

The school report—offering a useful factual account of observed behaviour in the school, refraining from comment on the fact that the child has apparently been an obvious candidate for special educational provision for many years, and placing all responsibility for the delinquency firmly in the home—will already have been received. So will the probation officer's evaluation of the home background, possibly including comments on the needs of the situation and the probable effects of alternative orders which might be made.

For the purpose of obtaining further reports, it is quite usual to remand juveniles in custody in order to meet difficulties of availability for examination and, in some areas, because the remand home warden's observations are invaluable. A person cannot legally be remanded as a punishment—a legal fiction which ignores the fact that the remand in custody is almost always a punishment to the juvenile.

Psychiatrists' reports seem to have a bad reputation in some courts and are often the subject of informal comment at meetings where magistrates from various Benches are gathered together. The psychiatric report may appear to make the least positive contribution, offering either a set of opinions based apparently upon some theory of personality development with which the Bench is not familiar (and would regard with the greatest suspicion if it were) or else a short description of the physical appearance of the juvenile, which the Bench knows already only too well, plus the defendant's own views on his case as previously explained by him to the Bench. In so far, however, as some Benches feel that the psychiatric report is no help, this feeling may sometimes be due to a misunderstanding of the psychiatrist's professional function, which is, according to Glover, confined to ' the cure

or amelioration of disordered mental states ', and does not include maintaining the virtues of punishment. ' Some few psychiatrists ' who do so are ' overstepping their professional boundaries, and in any case their utterances, unless based on convincing researches, have no more validity than the opinions of . . . the common citizen '.[9]

It is indeed necessary to keep clearly in mind the functions of these reporting experts, as also the nature and limitations of their professional competence. Remands for reports are made under section 26 of the Magistrates' Courts Act, 1952, and are made because the court is ' of opinion that an enquiry ought to be made into his ' (the delinquent's) ' physical or mental condition before the method of dealing with him is determined '. None of the reporting experts are, as such, experts in penology, nor is their professional responsibility in any case the protection of the public against crime. It is therefore, in the writer's opinion, not within their function to give advice to the Bench as to how the delinquent *ought* to be dealt with. It is within their function to describe his physical and mental condition, and to say as far as they can what his needs are, so that ' the method of dealing with him ' can be determined in the light of this knowledge and so that ' in a proper case ' steps can be taken ' for removing him from undesirable surroundings and for securing that proper provision is made for his education and training '. In our view, for instance, the medical officer would be within his function in saying: ' This boy needs regular food, exercise and sleep, which he cannot get in his present home ', or the educational psychologist in saying: ' This boy is underfunctioning intellectually and would enormously improve his attainment with regular school ', but not in adding: ' I would recommend approved school treatment for this boy '.[10]

Unfortunately, it is often the case at present that the only way by which the Bench can ensure that proper provision will in fact be made, and made within a reasonable time, is to make that provision itself, as far as it can, either under cover of a penological measure, e.g., a period of detention, committal to an approved school, or under the requirements of a probation order. There is, for example, provision under the 1944 Act for children who need a boarding school education to have it. But this provision is being interpreted exceedingly narrowly in most areas. Children who need residential special school education—including the maladjusted—are dealt with separately under another section and there are waiting lists at nearly all

[9] Edward Glover: ' Prognosis or Prediction,' *Brit. J. Delinq.*, Vol. VI, No. 2, p. 117.

[10] Lord Goddard's comment to the Magistrates' Association, reported in *The Times*, 19th October, 1956, based on C.J.A., 1948, section 43, is most important and relevant, but does the section necessarily bear the whole of the interpretation placed upon it? Opinions differ; see, e.g., F. G. Hait, ' How far should you go? ' (last para.), *Probation*, VIII, 4, p. 60, December 1956.

recognized special schools for the maladjusted. On the other hand, there are immediate vacancies at a good proportion of those approved schools which have not yet been closed as redundant. Nor, in any case, can the court force the local education authority to send a boy to a boarding school other than an approved school, even if ordinary boarding schools were eager to accept boys with criminal records.

Even if the court does not commit the juvenile offender to an approved school, he is still likely to have a considerably better chance than the next child of getting to one of the schools for the maladjusted (or of jumping the queue for the attentions of the child guidance clinic) by the very fact that one of the symptoms of his disturbance happens to be the commission of illegal acts. In this sense those who regard the juvenile court as a diagnostic clinic through which treatment may be secured are perfectly right. By being convicted the juvenile has been *ipso facto* diagnosed as a delinquent—a condition with a high nuisance value. From this angle, at any rate, it is unfortunate that at least in the early stages of a criminal career, the degree of ' welfare treatment ' offered is, for reasons already outlined, likely to bear more relation to the size or persistence of the offences than to the social needs of the offender.

Under present arrangements it seems as if some children have to be convicted as criminals in order to obtain proper education and training. There are a number of factors in the situation. One is the reluctance of education authorities to use some of their powers fully and the present shortage of places in schools for the maladjusted and in child guidance clinics. Another is the tendency of some workers in the social services to rely on the juvenile court to sort matters out and make a social diagnosis, instead of themselves working on the case with the co-operation of the appropriate services (an attitude sometimes due to inadequate or inappropriately specialized training). And again the fact remains that a system of diagnosing and treating children's needs has, in the juvenile court, been grafted on to one designed for protecting the public from crime by punishing the criminal. What are the alternatives?

One way of avoiding the conviction of all but persistent offenders is provided by the police supervision schemes now running in a number of large urban areas outside London, with Home Office approval.[11] Under these schemes the police examine the juvenile at the police station, obtain an admission of guilt, and arrange to supervise him personally for a period by visiting the home, offering advice and guidance to the parents, requiring him to report at intervals and so on.[12] The schemes cover mainly first offenders suspected of indictable offences, but also include children under eight and

[11] Home Office, 7th Report on the Work of the Children's Department, p. 41.
[12] Cf. ' The Police and Children,' published by Chief Constable, Liverpool, 1956.

juveniles of any age who seem to be getting into bad company. In many areas the numbers of juveniles dealt with by the courts dropped strikingly during the last two years. In Birmingham, where the Chief Constable's Report for 1955 includes the number of cases dealt with by the police alone, this number almost exactly balances the drop in convictions, so that there is probably little change in the number of offenders. The writer is not aware how far this may be true elsewhere.

Official recognition of a system under which it is assumed to be part of the duty of a police force to ' supervise ' persons who have not been convicted of any offence, or against whom in some cases no offence against the law is alleged, might have been expected to arouse some uneasiness. The schemes are, however, not widely known to the general public, but only to that section most nearly concerned, where they are said by the police to have been ' extremely well received '.[13] At present there are some signs of concern amongst the younger probation officers, some of the more legally-minded magistrates, and some clerks. The police are in this way taking the place of the professional experts who assess the child's needs before the Order is made and of the trained social case workers who help him afterwards. They are not trained to recognize or to deal with the cases where deep emotional disturbance is present, and as police the only tool they have is the threat of a court charge.

Similarly, the police by this method by-pass the court altogether and instead themselves act in the dual rôle of prosecutor and judge, in a case heard without the safeguard of press or public. They hear the evidence, decide on the guilt and, in effect, make the order.

It seems unlikely that the Judges' Rules regulating the questioning of accused persons at police stations, or the rules of evidence in summary trials, or the presumption of innocence of the accused in English law, are always strictly observed when the police are examining a child at the station. These are some of the legal objections to the system and they are serious. Indeed, it is not going too far to say that the schemes of police supervision of juveniles which have arisen in the last few years may turn out to be very important indeed to the courts of summary jurisdiction. The supposed advantages of avoiding conviction by such methods are likely to be less complete than is supposed since, although the answer to ' Any record?' in such cases must in law be ' none ', the later question ' Is anything known about this person? ' may well bring forth the information that he was in the hands of the police over a certain period. The whole position needs watching since, if there is no objection in principle, there is little to prevent such schemes, once firmly

[13] *Ibid.*, p. 11.

established, being extended to cover older age groups. They offer neither justice, as we understand it, nor welfare.

Another alternative often advanced,[14] and one which is also the law in many Continental countries, is that the trial of any person, say up to the age of fourteen, should take place in a court with a non-criminal jurisdiction —a sort of guardianship court. The presumption of innocence would be preserved and the court could still have the benefit of expert reports on the child, but there would be no criminal conviction. If it is objected that the stigma would then attach to a record of guardianship proceedings, it is suggested that a child who behaves well over a given subsequent period might have such a record expunged.

Another suggestion commonly made is for the trial to proceed as now, or as suggested above, up to the finding of guilt, but for the Order to be decided upon by the experts in child welfare and education to whom the child would be handed over for examination. In this way the treatment applied to the child would really be according to his needs and not to the nuisance value of his behaviour. To meet situations in which there might be a difference of opinion between the welfare experts and the child or his family it would be necessary for the experts to have powers of enforcement, since a reference back to court in disputed cases could only mean a return to the system of weighing the offence against the proposed treatment. It is likely that there would be a considerable body of opinion against the exercise of such powers administratively and outside the purview of the courts. ' No persons of any age,' remarked the Lord Chief Justice in the case of Rutty on 9th March, 1956, ' were to be confined in institutions merely because doctors and officials thought it would be good for them.'

Either of these two suggestions leaves unchanged the present position where the commission of an offence, however small or irrelevant it may be, is the turning point in the whole situation. It is this which exposes the child to the full blast of investigation and treatment. This is, in our opinion, an unsatisfactory, misleading, and even dangerous state of affairs. As long as the court is a Court of Justice and the making of the Order or passing of sentence is performed by Justices, there ought to be some obvious relation between the Order and the offence and record. To make compulsory, radical (and to him or his parents very painful and unwelcome) changes in a child's life, as an immediate consequence of convicting him of any but a very serious offence indeed, is to telescope together two procedures which may have no logical relation to each other and ought not to be so related. Sometimes the commission of illegal acts is the major symptom of maladjustment

[14] E.g. J. Watson: 'The Erring Child as a Criminal,' *The Magistrate*, April, 1955, p. 43.

in a child whose poor home background appears to be the cause of his maladjustment. In other cases, however, the child's major symptoms take quite other forms which are not the concern of a criminal court. The needs of the two children may be almost identical and the crux of the controversy appears to lie in consideration of the court's duty in these two cases respectively. In our opinion, social action in regard to the second case ought not to be taken under cover of criminal proceedings relating to a minor offence; this is an abuse of justice and of the law. Society must face honestly the question as to how far it is prepared to go in enforcing social conformity upon the deviant or sub-standard but reasonably law-abiding individual.

The dilemma is perhaps most clearly seen when we consider the implications of the Gluecks' work on the prediction of later juvenile delinquency in a group of six-year-old children—all of whose social backgrounds contain certain features.[15] Already from some quarters the courts are urged to make the most fundamental rearrangements in the lives of children from poor home backgrounds on the pretext of some minor offence having been committed. The Gluecks' work suggests that by going only slightly further along the same lines, there would be no need to wait even for this pretext, since the existence of these features in the social background of a child is a better predictor of a criminal future than is the commission of a first offence.

The present system is producing a somewhat chaotic situation in which the rôles of some of the actors are becoming confused, as e.g., the Justices turn their attention more strongly to the consideration of social need and some of the advisory experts in welfare expand their sphere of interest to almost God-like proportions and include the use of punishment in their 'treatment plan' for the client. The situation may well be due to the high degree of class discrimination, which (as has often been pointed out) is incidental to the present operation of the juvenile court system, and which may have meant that those most affected are those least likely to be vocal about it. Some responsibility probably lies at the door of the lay magistrates since, although many doubtless possess a judicial mind, few have legal training, or are keenly aware of fundamental legal issues.

In the writer's view we need, not to re-examine the juvenile court system with a view to further modifications, but first to trim off all those excrescences which do not rightly adhere to a criminal court at all. A start could then be made upon the problem of how to secure that proper provision is made in the welfare state for the education and training of children in trouble.

[15] S. and E. Glueck: 'Unravelling Juvenile Delinquency.'

THE ADMINISTRATION OF THE JUVENILE PENAL LAW IN THE FEDERAL REPUBLIC OF GERMANY[1]

By RUDOLF SIEVERTS (Hamburg)

The special criminal law for offenders between the ages of fourteen and twenty-one years is to-day regulated in the Federal Republic of Germany by the Juvenile Court Act of 4th August, 1953, in combination with the Juvenile Welfare Act, 1924, as re-enacted in 1953. The juvenile penal law of the German Democratic Republic (Eastern Germany under a Soviet-Communist régime) has been regulated by a special Juvenile Court Act of 23rd May, 1952. Lack of space prevents us from considering this law which in many respects is different from the state of affairs under West-German law.

The Juvenile Court Act, 1953, was preceded by the Juvenile Court Acts of 1923 and 1943. The Act of 1923 was the result of a German reform movement beginning with the Second Congress of the German Branch of the International Criminalistic Association in 1891, and initiated, like so many other things, by the great German reformer of criminal policy, Professor Franz von Liszt. For the following decades the reform of the juvenile penal law was a standing topic of discussion at the conferences of German lawyers, of the German Movement for Juvenile Courts, of the Movement for the Emancipation of Women, of forensic psychiatrists, and of educationists. It is remarkable that in Germany this movement of reform had been started and promoted above all by the legal profession, by the judges in particular. Its first success, in 1909, was the constitution of special departments exclusively concerned with the trial of juvenile offenders within the organization of the courts in the urban districts of Frankfurt am Main and Cologne. Similarly, preliminary investigation and prosecution of young people was entrusted to a special public prosecutor who soon came to be called ' juvenile prosecutor '. German courts in their hundreds had followed this example before the outbreak of the First World War. Reform by legislation had started in 1908 by a resolution of parliament requesting the government to inaugurate with the greatest possible speed a reform of the criminal law in respect of young people, but, owing to the outbreak of the

[1] Translation by Dr. A. Schwarzschild (London).

First World War, the debates on the drafts submitted by the Department of Justice could not be concluded.

In Germany, too, this world war had brought an unprecedented increase in juvenile criminality, and the crime wave subsisted for a number of years after the end of the war. This induced the government as early as the year 1919 to submit to parliament a draft-bill for the special treatment of juvenile offenders. This Bill, after it was brought in harmony with the draft of the Juvenile Welfare Act which had meanwhile been prepared, was presented to parliament in 1922 by Dr. Gustav Radbruch, the distinguished professor of criminal law and jurisprudence, who was then Minister of Justice, and it was accepted almost unanimously on 16th February, 1923. The date of commencement both of the Juvenile Court Act and the Juvenile Welfare Act was 1st January, 1924.

This Act of 1923 was a truly revolutionary step in the history of the German law. The two subsequent Statutes of 1943 and 1953 merely developed further what it had achieved. No longer is it solely the guilty act and guilty mind, but above and beyond it is the personality of the offender which has become the centre of gravity for the approach of the criminal law to young people. The new system of treatment followed the principle of the Juvenile Welfare Act, passed at the same time, which in paragraph 1 laid down that every German under age has a right as against the State to be brought up to full physical, mental and moral fitness, if parental education should fail. Thus it was no longer the idea of retribution but that of education which governed the treatment of the young offender. The law of 1923 no longer regarded the young lawbreaker as a ' little adult ' to be dealt with under the Penal Code which, as a rule, would provide a milder mode of punishment; it recognized that he is conditioned by the specific psychological, biological, and sociological peculiarities of his age-group, and provided for treatment accordingly. Such treatment was not to be ' softer ' in principle than that provided by the general penal law; it was to be more efficient, that is to say, more conducive to educational training, and, if need be, it must allow for even more drastic interference. A good many of the demands of the German Movement for Juvenile Courts, which since about 1905 has been largely influenced and strengthened by reform movements in the United States, Great Britain and Belgium, were put into effect by this Act of 1923: the age of criminal responsibility was raised from twelve to fourteen years; it provided that in the case of a young person between fourteen and eighteen years of age the judge always had to examine carefully whether the juvenile was sufficiently mature, not only with regard to intellect but also from the social and emotional point of view, to be capable of a guilty mind; it abolished capital punishment, penal servitude and any

penalty involving social disgrace, for all young people; it supplemented the remaining forms of punishment (imprisonment, detention, fine) by a system of reformative measures, both institutional and non-institutional; it laid down a rule for the judge to examine first whether the case cannot be adequately dealt with by reformative measures before imposing a punishment; it subjected imprisonment of young people to the principle of education and training by providing that the sentence must be served in a special ' juvenile prison ', strictly separated from the ordinary adult prison; and in cases of a short-term prison sentence it gave the judge discretionary power to suspend the execution of the sentence upon probation. It reformed the organization of the courts by providing for juvenile courts, at the level of a Magistrate's Court, which are constituted by a judge either sitting alone or assisted by two lay justices with special knowledge of youth and its problems. It created a special procedure in matters of juvenile offence which in principle is in private. It gave wide discretion to the prosecution and the court to stop proceedings against a young person in trivial cases or such as could be dealt with more effectively by educational measures only; it also made it possible in such a case to refer the young person to a Court of Guardianship. In general, it recommended that guardianship cases and charges against young persons should be dealt with by the same person.

The Act of 1923 proved in practice a complete success, above all in the mass of simple cases which did not raise any complicated psychological or social problems. Yet a few defects and gaps soon showed themselves which the Act of 1943 tried to correct and close. As a new form of treatment it introduced juvenile detention (*Jugendarrest*) which, in the two forms of continuous detention (*Dauerarrest*) and week-end arrest (*Freizeitarrest*), had been demanded already at the Second German Juvenile Court Conference in 1911 by Friedrich Wilhelm Foerster, the distinguished Swiss-German educationist. This was meant as a short ' term for reflection ', without the social disgrace involved in a criminal penalty, for young offenders who, while not yet really antisocial,[2] have arrived at a critical stage of development and need an impressive reminder to become aware of their responsibility towards their fellow-beings and to learn respect for other people's rights. The Act further made special provision for the treatment of seriously deteriorated[2] young criminals, that is to say the prospective recruits of habitual crime. The fixed prison sentence, on the punishment-of-the-offence principle mostly a short-term one, was inadequate for this purpose, and on the model of the

[2] *Verwahrlost*. There is no precise English equivalent of this term, which also does not appear to have been legally defined. It may have meanings such as ' running wild ', ' wayward ', ' intractable ', ' neglected ', ' demoralized ', ' disorderly ', and ' deteriorated '. Subsequently, one of the last three words will be used, depending on the context (transl.).

Austrian Juvenile Court Act, 1929, and the English Borstal Training, an educational sanction of relatively indeterminate duration (*relativ unbestimmte Erziehungsstrafe*) was introduced for these cases. The Act of 1943 further abolished fines, detention and prison, for juvenile offenders, permitting of only one criminal penalty, the 'juvenile prison'. A further achievement, taken over from Italian juvenile law, was to empower the judge to order deletion of a conviction from the criminal record, that is to say to give him discretion to remove even that degree of social disgrace which would still attach to a sentence of 'juvenile prison'. It was also an innovation to entrust the judge with the decision when a young prisoner serving an indeterminate sentence in a juvenile prison should be conditionally discharged, first by way of experiment, and finally for good. The judge in question is attached to the juvenile court which has local jurisdiction over the prison. All these provisions complied with the demands of the Movement for Juvenile Courts. Apart from these achievements, the Act of 1943 also contained some reactionary provisions which resulted from the National-Socialist overemphasis on the idea of punishment as an end in itself.

The Act of 1953 was needed, first, to purge the juvenile law of these National-Socialist blemishes, and, secondly, to carry out some urgent reforms which, long overdue, had been prevented by the Second World War. There was first and foremost the extension of the juvenile law to at least some of the offenders between the ages of eighteen and twenty-one years whom the law calls adolescents (*Heranwachsende*). This demand had been made by expert circles at the Sixth Juvenile Court Conference in 1924, as soon as the Act of 1923 had come into operation, and it had been repeated ever since. The second great achievement was the development of the probation system, again utilizing foreign experience with which Germany had become familiar during the occupation period by the work of the British and American military authorities. In a number of other respects, too, the Act was an improvement on the previously prevailing state of affairs.

The Law as at Present in Force and its Application

The Juvenile Court Act codifies all provisions which deviate from the general criminal law and are considered necessary in Western Germany for young people who, after completion of their thirteenth but before completion of their twenty-first year of age, have committed a criminal offence.

The Act recognizes three age-groups:

(1) Offenders below the age of fourteen. These the law declares exempt from criminal responsibility, with the result that no criminal proceedings against them are possible. They are exclusively under the jurisdiction of the Juvenile Welfare Office (a local authority) and the Court of Guardianship

which may order educational measures as provided by the Juvenile Welfare Act.

(2) Offenders between the ages of fourteen and eighteen years whom the law calls young persons (*Jugendliche*) (paragraph 1).[3]

(3) Offenders between the ages of eighteen and twenty-one years whom the law calls adolescents (*Heranwachsende*).

The Criminal Law of Young Persons

A special juvenile public prosecutor (*Jugendstaatsanwalt*)[4] is charged with proceedings against juvenile offenders who are tried before a special juvenile court. The juvenile court at the level of a magistrate's court is constituted in trivial cases by a judge sitting alone or, in more serious ones, by a judge as chairman and two assistant lay justices. A judge sitting alone may not impose a sentence of juvenile imprisonment (*Jugendstrafe*) exceeding one year or an intermediate sentence. The juvenile chamber at the level of assizes or quarter sessions is constituted by a bench of three judges and two lay justices and is competent to try grave offences such as in ordinary criminal proceedings are tried by a jury (*Schwurgericht*). Further, on application by the judge of a magistrate's court, it may try cases which are unusually complicated. Finally, it acts as a court of appeal against judgment of a judge sitting alone or with two assistant lay justices. All proceedings before juvenile courts require participation of the 'Juvenile Court Assistance' (*Jugendgerichtshilfe*) which is carried out by the Juvenile Welfare Offices in co-operation with voluntary associations for juvenile aid. Juvenile Court Assistance workers are to report on the educational, social, and welfare points of view, and investigate such conditions as are relevant to the assessment of the young offender's personality. They are also concerned with the supervision and implementation of such orders of the Court as do not entail a deprivation of liberty (paragraphs 38–42).

The prosecutor, the judges, and the assistant lay justices should have educational qualifications and experience (paragraph 37), but this is a rule which is by no means universally followed in Western Germany.

On trying an offence committed by a young person, the court must first examine whether 'at the time of the offence his moral and mental development was sufficiently mature to enable him to see that his action was wrong, and to act according to this knowledge' (paragraph 3); if the answer is in the negative, there can be no punishment by means of correction and juvenile imprisonment. As a rule, the case will then be transferred to the Juvenile

[3] Paragraphs quoted refer to the Juvenile Court Act (*Jugendgerichtsgesetz*), 1953, unless otherwise stated (transl.).

[4] This official will subsequently simply be called prosecutor (transl.).

Welfare Office and the Court of Guardianship for further treatment, unless the judge himself will order such measures under the Juvenile Welfare Act as the Court of Guardianship would have done.

If the court has found that the young person is guilty of an offence, it may nevertheless, in a trivial case, stop proceedings with the prosecutor's consent if a measure of education and training no longer appears necessary (paragraph 47). The prosecutor is empowered to stop even preliminary investigation on the same grounds (paragraph 45). If, however, the offence is of such a kind that the law prohibits such a termination of the proceedings, or if this would be inappropriate, the court has at its disposal the following sanctions:

(1) By way of measures of education and training (*Erziehungsmassregeln*): direction (*Weisung*), protective supervision (*Schutzaufsicht*), and education in a Public Welfare Institution (*Fürsorgeerziehung*); (2) by way of means of correction (*Zuchtmittel*): reprimand, imposition of special duties, and juvenile detention (*Jugendarrest*); (3) as the only criminal penalty: juvenile imprisonment (*Jugendstrafe*); (4) committal to a mental hospital; (5) suspension of the driving licence, if the young person has been guilty of a motoring offence.

Legally speaking, neither educational measures nor means of correction are forms of punishment under the criminal law. They are not entered on the criminal record, and offences for which they have been imposed do not count as offences in the sense that they may be used to qualify an offender as a recidivist. Though preponderantly educational, the means of correction, like juvenile imprisonment, are not exclusively so; the law gives them the additional function of formal punishment to make the offender atone for his guilt (paragraphs 13, 17).

The court must first examine whether measures of education or means of correction are an adequate reaction to the offence (paragraph 5); only if the answer is in the negative may it impose juvenile imprisonment. This, the only criminal penalty the law permits for juvenile offenders, is allowed only ' if, in view of the young person's dangerous propensities as revealed by the offence, measures of education and training and means of correction are insufficient to achieve reformation, or if the offence involves such a high degree of guilt that punishment is necessary ' (paragraph 17).

The court can decide upon this only by examining the young person's educational background and social prognosis. In the selection of sanctions the decisive question from the reformative point of view is whether the young person has to be removed from parental care for any length of time, or whether it is sufficient to leave him in his present surroundings but reinforce their educational efficiency by certain orders. If the latter is adequate, the

following possibilities of additional education are at the disposal of the court: it may give directions, *i.e.*, commands and prohibitions, ' to regulate the young person's conduct and thereby promote and ensure his education ' (paragraph 10). By way of example, the law mentions directions as to residence, to live with a family or in a hostel; to take a position of apprenticeship or employment; to do a special kind of work; to refrain from association with certain persons or from visits to public houses or places of entertainment; to refrain from drinking or smoking; to take part, in the case of an offence against traffic regulations, in a course of instruction arranged by the police. With the consent of the parent or guardian, the court may order the young person ' to submit to treatment by an expert educational therapist ', and, if the young person is over the age of seventeen years, he should agree to this himself. The court may subsequently modify or cancel directions if educational reasons require it. If the young person wilfully fails to comply with directions, the court may order *Jugendarrest* if there had been a previous warning about this possibility. To ensure supervision of the directions, the court may order additional protective supervision (*Schutzaufsicht*) which will be exercised by Juvenile Court Assistance workers, frequently in co-operation with voluntary organizations for juvenile aid (paragraph 12; paragraph 56, Juvenile Welfare Act). It may also order protective supervision without issuing directions.

If the court does not consider it necessary to exert influence upon the young person's conduct by way of directions and protective supervision, it may confine itself to a formal reprimand in the judgment (paragraph 4). This, however, is in most cases not an adequate reaction to the offence, and the court will take recourse to the means of correction by imposing special duties. This is to be done when, ' though juvenile imprisonment is not required, it is imperative to impress upon the young person that he must take responsibility for the consequence of the wrong he has done ' (paragraph 13). In the way of special duties the judge may order the young person: (1) to compensate for the damage done; (2) to make a personal apology to the person injured; (3) to make a financial contribution to a charitable institution if the offence is trivial and it can be assumed that he will pay out of funds of which he is allowed to dispose at his own discretion. If he wilfully fails to comply with these duties *Jugendarrest* may be ordered.

There are, however, cases where it seems extremely likely that the young person charged with an offence will not, because of his irresponsible disposition, be sufficiently impressed by either directions or the imposition of special duties, so that it is necessary to subject him to something more drastic. In these cases *Jugendarrest* may be ordered for which the law now provides three forms: (1) week-end arrest (*Freizeitarrest*) during the weekly off-duty

period for not less than one nor more than four periods; (2) short-term arrest (*Kurzarrest*) if the former is precluded by the young person's terms of employment; here two days equal one period, but short-term arrest is not to exceed six days; (3) continuous detention (*Dauerarrest*) for not less than one nor more than four weeks. *Jugendarrest*, as we have said, may be ordered only if the young person does not yet show any ' dangerous propensities ', *i.e.*, if he is not disorderly[2] to a serious extent, though non-institutional measures alone will not be enough to bring him to his senses.

There are still further cases where the offence involves such a high degree of guilt that even *Jugendarrest* will not be an adequate reaction. Here the court may pass sentence of a fixed term of juvenile imprisonment but, if this term does not exceed one year, it may order suspension of execution upon probation if ' the offender's personality and his previous history in conjunction with his conduct after the offence or with a favourable change in his circumstances make it likely . . . that he will be of good behaviour in the future ', even if he does not serve his sentence (paragraphs 20–26). The judge will order a probationary period of not less than two nor more than three years, but he may subsequently alter the term. For the duration of the probation period he may issue directions and impose special duties. During the probation period a full-time probation officer, supervised by, and responsible to, the court, will supervise the conduct of the young person and give him care, help and advice. In exceptional cases the court may appoint a voluntary probation officer. This conditional suspension of execution may be revoked at any time during the probation period if the young person's conduct gives cause. If the young person is of good behaviour throughout, there will be an absolute discharge at the end of the probation period.

If the court is of opinion that a young person charged with an offence must be removed from his previous surroundings for some length of time to prevent recidivism and to subject him to special institutional education and training, it may order the following measures of ' substituted education ': (1) education in a Public Welfare Institution (paragraph 12; paragraphs 62 ff., Juvenile Welfare Act). This is indicated especially for young persons who are either demoralized[2] or at least in substantial moral danger but whose offence does not require juvenile imprisonment and who are suitable for education in an open or semi-open institution. Education in a Public Welfare Institution may as a rule be ordered until completion of the seventeenth or, in rare cases, the eighteenth year of age; it is for an indefinite period, provided only that the minor is discharged on reaching the age of twenty-one.

(2) If the young person has become disorderly [2] owing to disease of the

[2] See footnote, p. 208.

mind, the court may order him to be confined in a mental hospital, if public safety requires it (paragraph 7; paragraph 42, German Penal Code).

(3) If a young person charged with an offence exhibits signs of serious criminal deterioration [2] which is not expected to yield to education in an open or semi-open institution, the court will order juvenile imprisonment on the grounds of the ' dangerous propensities revealed by the offence ' (paragraphs 17–19). The minimum in every case is six months and the maximum as a rule five years; but if the offence is a felony punishable under the general criminal law with more than ten years of penal servitude, the maximum will be ten years.

The court may pass a fixed sentence of juvenile imprisonment but in doing so should take care to allow the juvenile prison authorities sufficient time for effective education and training. However, the courts show an increasing tendency to impose an indeterminate sentence in cases of serious criminal deterioration [2] to make it possible for the prison authorities to work on a flexible plan which is completely adapted to the individual needs of each case. This indeterminate sentence of juvenile imprisonment may only be passed if it cannot be anticipated at the time of the trial how long educational influences must be applied to achieve success (paragraph 19). If the court lays down no time limits in an indeterminate sentence, it is deemed to be for not less than six months nor more than four years. Discharge from a juvenile prison is as a rule first conditional upon probation under the supervision of a probation officer, but in very special circumstances an absolute discharge may be ordered. The probation period is the same as in the case of conditional suspension of execution of sentence. The decisions involved in a conditional discharge rest with the judicial member of the prison administration (*Vollstreckungsleiter*), *i.e.*, with the judge of the local juvenile court.

If the court after careful study of the offender's personality remains in doubt whether the offender is in such moral danger as would make juvenile imprisonment appropriate, it may proceed to a conviction but suspend further action during a period of probation of not less than one year nor more than two years. The young person is placed under the supervision of a probation officer. If his conduct is bad, the court will proceed to sentence without a possibility to suspend execution. If his conduct is good, the conviction is deleted from the criminal register at the end of the probation period (paragraphs 27 ff.).

How does this system of sanctions work in practice? The first point to make is that many judges who have been transferred to the juvenile courts from the ordinary criminal courts find considerable difficulty in adapting

[2] See footnote, p. 208.

themselves to the social and constructive purpose of the juvenile penal law as an Offenders' Law (*Täterstrafrecht*). It is by no means easy to give up the traditional approach of letting the punishment fit the crime, based on the principle of retribution for the guilty act. A judge who cannot come to terms with the new approach will tend to dispense even the juvenile law on a fixed tariff, as it were. Where he formerly would impose a short-term prison sentence, he will now automatically order *Jugendarrest;* or instead of the usual fine he will order a financial contribution to a charitable institution. These initial difficulties, however, have been largely overcome, in particular in the great and medium-sized cities where the judges are exclusively concerned with trying young persons and adolescents. In the country and in the small towns, the judges whose main duty is to try adults and who only rarely have occasion to sit in a juvenile court and try young persons and adolescents are finding it more difficult to adapt themselves to the peculiarities of the juvenile penal law.

The most recently published Federal Criminal Statistics show that during the first six months of the year 1955 the Juvenile Courts of the Federal Republic had convicted 22,139 young persons. 2,453 of these were sentenced to juvenile imprisonment, with suspension of execution in 735 cases. Means of correction (the preliminary statistics unfortunately give no differentiated figures) were ordered in 19,137 cases, and measures of education and training in 549. Sentence was suspended upon probation in 289 cases. Twenty-two cases were committed to a mental hospital. Proceedings were stopped by the court in 1,553 cases despite proof of an offence, and by the prosecutor in 3,355 cases during the preliminary investigation. There had been 1,146 acquittals.

These figures show very clearly a marked trend in the German administration of the juvenile law to avoid trial and judgment by a juvenile court altogether in the case of trivial offences committed by young persons not in moral danger, and to stop proceedings beforehand. They show further that the criminal penalty of juvenile imprisonment in the case of young persons plays a very minor part in respect of numbers, accounting only for approximately 10 per cent. of all convictions. The figures show further that the courts are chary of suspending its execution upon probation, but possibly still not chary enough. When a court decides on juvenile imprisonment, it has first ascertained either that the young person is criminally deteriorated,[2] or that his offence involves such a high degree of guilt that means of correction are not sufficient to punish it. It would then in most cases appear quite absurd not to go through with the criminal penalty.

[2] See footnote, p. 208.

The sanctions most frequently applied by the courts to juvenile offences are the means of correction (*Zuchtmittel*). The Federal Criminal Statistics for 1953 were the last to show the percentages in which individual means of correction had been ordered. *Jugendarrest* accounted for just over 50 per cent.; in 55 per cent. of these cases continuous detention was ordered, and for the remainder short-term or week-end arrest. Imposition of special duties accounted for roughly one-sixth of all cases where means of correction were ordered; in 80 per cent. of these it took the form of a financial contribution. A reprimand was given in 30 per cent. of the cases. In the group of educational measures, education in a Public Welfare Institution was ordered in 27 per cent. of the cases, protective supervision in about 50 per cent., and directions were issued in 20 per cent. The last figure, however, only shows directions formally expressed in the judgment, leaving out the numerous obligations freely agreed between the young person and the court on a basis of mutual confidence, which are often very successful. The relatively small number of cases where education in a Public Welfare Institution has been ordered is due to the fact that by the time they come to trial many offenders of sixteen or seventeen years will have started their eighteenth year and therefore no longer are liable to this measure of education and training. Hence the demand either to extend education in a Public Welfare Institution to the eighteen–twenty-one age-group, or to create by way of legislation a special measure of institutional education without the stigma of a criminal penalty for this group.

In the course of the last few years, the practical application of the provisions regarding juvenile imprisonment has turned the juvenile prisons primarily into institutions for the training of seriously deteriorated [2] young criminals who present particularly difficult educational problems. Young persons who are serving their sentence there solely to expiate a grave offence involving a high degree of guilt form a very small minority. The prison authorities are only gradually beginning to draw the consequences of this development regarding staff appointments and training, and to adapt the methods of the institution to the particular requirements of its inmates. However, reform is progressing fast, and would have advanced even further if the parliaments and treasuries of the *Länder* had shown greater understanding of the need for an increased staff of juvenile prison officers with better pay. The courts are becoming ever more convinced that in the case of severely deteriorated [2] young criminals the only appropriate sanction is that of an indeterminate sentence of juvenile imprisonment.

Probation as carried out by paid full-time probation officers has proved

[2] See footnote, p. 208.

very successful since 1953. In most German *Länder* the probation officers, whose training must at least equal that of a social worker, are appointed and paid by the Department of Justice; in other *Länder* by the Juvenile and Welfare Authorities. To-day their number within the Federal Republic is about 250, and a considerable increase is anticipated for the next few years. Unfortunately, the law to-day provides for the probation officer's assistance only in respect of young persons under suspended sentence or suspended execution of sentence of juvenile imprisonment, or on conditional discharge from a juvenile prison. Our aim for the future is to extend the same intensive social and educational care to cases of protective supervision and conditional discharge from a Public Welfare Institution. At present, protective supervision is handicapped by lack of trained staff. The experiences with probation proper are so far extremely encouraging, though it is not yet possible to give definite results.

Jugendarrest as continuous detention in solitary confinement is carried out in special juvenile detention centres which are kept separate from the ordinary prisons and supervised by the judge of the local juvenile court. With accommodation for thirty to fifty, they are maintained by the prison authorities who also supply the staff. These centres still vary very much in quality over the Federal Republic, but conditions are steadily improving. In well-run detention centres the detainees are frequently called on in their cells by the judge and his assistant who, if possible, should be a trained educationist. These educational talks have shown themselves to be an excellent method for making the young person realize with lasting effect what is wrong with him and how he has brought himself into a dangerous position by his offence. They will also show the judge and his assistant a good deal that has not come out before: family quarrels, vocational difficulties, other trouble, and so on. Here the element of care comes in to complement the penal sanction; if need be, it can be ensured by an order of protective supervision. Well-run detention centres supplement the individual interview in the cell with group functions for the detainees such as guided discussion of current events and the like, or bible study. As a matter of course, detention centres keep the detainees busy in their cells with simple jobs such as bookbinding and similar light work. The superintendent is empowered to order a discharge whenever he considers that the maximum effect has been achieved —in most cases this is after a fortnight. Experienced superintendents are strictly opposed to the demand that the law should extend the maximum term of continuous detention to more than four weeks and to assimilate it to some extent to the six months' minimum of juvenile imprisonment, since they have seen that it is quite usual for the inmates after four weeks to show signs of institutionalization which are most undesirable. In Germany, juvenile

detention does not work with 'shock therapy' which rarely is of lasting effect; the idea is to give the young offender, under careful educational guidance, a chance for reflection, quite inevitable in the isolation of solitary confinement—very often the first chance in a life hitherto spent in the cramped housing conditions of to-day, at work, in the street, and so on, always distracted by passing impressions and surrounded by other people.

Investigations about the effect of juvenile detention on the detainees after discharge have been started with regard to some detention centres. Though they have not yet been concluded, they justify the statement that well-run juvenile detention, if ordered at the right time, that is to say when the young person is not yet in substantial moral danger or disorderly,[2] may in very many cases nip in the bud his questionable mental and moral development and set him firmly on the right path. If juvenile detention centres show high figures of recidivism, there is always a suspicion either that the courts have committed young persons who have already become so disorderly [2] that they are no longer able to respond to the limited instructional methods of *Jugendarrest*, which are mainly addressed to the intellect, but need group training and systematical education during working and leisure hours either in a Public Welfare Institution or in a juvenile prison, or else, that these centres are content with restricting the inmates' personal freedom in the same way as under a short-term prison sentence of the old style, and do not exercise any educational influence at all.

Investigations into the results of juvenile detention at present in progress have further created the impression that in many cases where the courts confined themselves to issuing directions or imposing special duties they would have done better to subject the young person to this strict if short treatment.

Week-end and short-term arrest present rather more problems than continuous detention. Unless there is a detention centre in the neighbourhood, these kinds of arrest take place in an office of the magistrate's court under the eye of a police inspector attached to the court and supervised by the judge, and consist solely in deprivation of liberty without either work or an opportunity for reading. Though here, too, the judge is supposed to have educational talks with the detainees, he can hardly ever find the time as he is overburdened with other duties. Thorough research into the effects of this kind of arrest is imperative.

It remains to be mentioned that juvenile court procedure is always in private and without many of the formalities which characterize general criminal procedure. Proceedings before a judge sitting alone are particularly

[2] See footnote, p. 208.

simplified, requiring not even the participation of the prosecutor who merely has to be informed of the time of the hearing. However, a young person charged with an offence has the same legal rights in respect of his defence as an adult.

The Criminal Law of Adolescents

Two ways were open to the legislature in respect of the extension of the juvenile law to offenders between eighteen and twenty-one years of age: the first is to have juvenile law apply to all adolescents, either without exception, or excluding only a few restricted cases of grave offence involving a high degree of guilt, possibly also adolescents for whom the educational sanctions of the juvenile law are no longer appropriate. This kind of regulation has been demanded since 1924 by those connected with juvenile courts and juvenile welfare.

The second possibility is to leave in the future as in the past all adolescents subject in principle to the general penal law, but allow by way of exception application of the juvenile law in special cases of retarded development or relapse into childish behaviour. This way was ultimately chosen by the law, since the replies of the heads of the Supreme Courts and prosecuting authorities of the *Länder* to a *questionnaire* circulated by the Federal Ministry of Justice showed that the majority of persons concerned with the general administration of criminal justice considered any extension of the juvenile law beyond the eighteenth year of age undesirable. This objection was based upon the consideration that it had always been precisely this eighteen–twenty-one age-group where the incidence of criminality, especially serious crime, had been highest in Germany; but further also upon ignorance or misunderstanding of the true nature of the juvenile law as a constructive means of social control, and of its superior possibilities in the field of criminal policy. However, the Federal Legislature has made it quite clear that the provisions contained in paragraphs 105, 106 are only temporary and experimental. If practical experience were to show that, even from the point of view of social defence, the application of juvenile law to adolescent offenders is more appropriate than their treatment under the general penal law, the first way will be adopted in the future reform of German Criminal Law as a whole.

The law has deliberately entrusted this experiment not to the ordinary criminal courts but to the juvenile courts, since these have more experience in the assessment of young offenders. The juvenile courts have jurisdiction to try all offenders between eighteen and twenty-one years (paragraph 108). Proceedings before these courts against adolescents are in principle subject to the general rules of criminal procedure, but the court may in an individual

case exclude the public on educational grounds. In these proceedings the court must also observe all those special provisions which in juvenile procedure serve the special study of the young offender's personality. In particular, it must give facilities to the Juvenile Court Assistance (paragraph 109).

To apply juvenile law to an adolescent means to put all its sanctions available for a young person who has committed an offence at the disposal of the court. Education in a Public Welfare Institution is mostly out of the question only because it cannot be ordered for a person under age who has completed his eighteenth year, though in exceptional cases it may, with the consent of the Public Welfare Authority, be ordered until the nineteenth year (paragraph 63, Juvenile Welfare Act).

If general penal law is applied to an adolescent, the court may mitigate the punishment in the following way: where the statutory punishment is penal servitude for life, it may be turned into penal servitude for not less than ten nor more than fifteen years; where it is a fixed sentence of penal servitude, it may become a sentence of imprisonment of equal duration. Preventive detention, loss of civic rights or of the capacity to hold public office are in the discretion of the judge even where the law makes them obligatory in the case of adults (paragraph 106).

Prison authorities are empowered to arrange for prisoners who have not completed their twenty-fourth year of age and are suitable for juvenile imprisonment to serve their sentence in a juvenile prison (paragraph 114). This provision legalizes a state of affairs which had existed since 1937.

The guiding rule for the application of juvenile law to an adolescent offender is laid down in paragraph 105 which reads:

> 'I. If an adolescent commits an offence punishable under the general law, the judge will apply the provisions laid down for a young person in paragraphs 4–32 if
>
> (1) the total assessment of the offender's personality with regard to his background shows that his moral and mental development at the time of the offence was still equal to that of a young person, or
>
> (2) the nature, circumstances, or motives of the offence show it to have been youthful mischief.'

This provision has nothing to do with the adolescent's capacity to form a criminal intent. Before it can apply, the offence must have been proved before the court against the adolescent in the same way as against an adult offender. It merely lays down the conditions where the application of sanctions of the juvenile law to an adolescent is more expedient than that of the general penal sanctions. The law intends that all adolescents are to be dealt

with under the juvenile law who at the time of the offence still show that immature level of development for which the sanctions of the juvenile law are particularly designed.

Following the strict letter of the law (paragraph 105, I) 1 (*supra*), the judge is to compare the personality of the adolescent offender with the personality typical of a young person under eighteen. However, it was soon shown in practice that such a comparison is impossible since no child psychologist or juvenile psychiatrist has yet been able to define such a typical average personality. The eighteenth birthday as a point of demarcation has proved to be artificial since it does not correspond to a natural phase of development in the life of young people. Only if the personality bears all the hall-marks of full maturity will the court refrain from applying the juvenile law and proceed to pass sentence according to the general penal law. But all these standards are so ambiguous, they depend so much upon different experiences, psychological knowledge, understanding and other factors in the personal make-up of the judges and experts, that the application of this provision (paragraph 105, I (1)) results in profound divergencies among the individual courts all over the Federal Republic. Some do not take much trouble over this examination, investigating only if the adolescent offender shows clear symptoms of a particularly retarded development and applying the general penal law in all cases of doubt. Others conscientiously investigate the stage of development attained in each individual case, above all where the offence is a serious one. There is a general tendency when in doubt to apply the general penal law to traffic offences, unless the consequences are serious or the degree of guilt involved particularly high, probably because otherwise there is no possibility of sentence without a hearing, and even the juvenile courts are so overwhelmed with traffic offences that the sheer weight of numbers would make it quite impossible for them to cope with all cases unless they were to use this expedient. However, a serious criminological study of adolescent traffic-offenders shows that to credit this particular age-group with peculiar gifts, special knowledge, and thus sufficient maturity to master modern traffic conditions is an unwarranted assumption, particularly in this last respect.

The concept of youthful mischief, used in paragraph 105, I (2), leads to similar uncertainty of interpretation. The principle is that if the offence as such bears the hall-mark of youthful immaturity revealed by its nature, circumstances and motives, the court is to apply juvenile law without the need for an assessment of the personality. Here, too, the result has been that the standards as to whether there was youthful mischief or not are most unequal, and the decisions of the courts in this point are widely divergent. The Supreme Federal Court has decided that even grave offences such as

perjury may in a given case be youthful mischief within the meaning of the Act, that the Act is therefore not restricted to mere childish pranks. In very many cases, however, it is only possible to decide whether or not an adolescent offence had been youthful mischief on the basis of a total assessment of the offender's personality under paragraph 105, I (1).

How has this special criminal law for adolescents (offenders between eighteen and twenty-one years of age), as in force since 1st October, 1953, worked in practice? This was the principal topic of the Tenth German Juvenile Court Conference, convened by the German Association for Juvenile Courts and Juvenile Court Assistance and held in the university town of Marburg a. d. Lahn on 11th–13th October, 1956. More than 500 persons took part, all of them active in the administration of the juvenile law in the Federal Republic as judges, prosecutors, Juvenile Court Assistance workers, probation officers, police experts on juvenile matters, psychologists, educators and psychiatrists. As the Association will publish the reports and transactions of the Conference in 1957, a very short survey of its results must suffice. The following resolutions were passed:

(1) Scientific criminological research on the adolescent offender has been particularly stimulated by the Juvenile Court Act, paragraph 105. German criminologists to-day are working mainly in this field. This is completely justified by the criminological importance of this age-group in relation to criminality as a whole within the Federal Republic. Research is now extending to the twenty-one–twenty-five age-group whose criminality in respect of quantity and quality is no less than that of the adolescent offenders. The Tenth Juvenile Court Conference offered an unusual wealth of new criminological insight which opens up important aspects for the further shaping of the various modes of treatment.

(2) The figures of the Federal Criminal Statistics 1950–1955 for adolescents have remained constant with, if anything, a slight downward trend over the last three years. The picture is even more favourable if the increasing number of traffic offences is disregarded. In any case, the Federal Criminal Statistics show that the apprehensions on the part of the heads of the Supreme Courts and prosecuting authorities in 1953 were unfounded, and that the extension of the juvenile law to many adolescents has had no adverse effect upon the development of criminality in this age-group. On the contrary, the figures are an encouragement to pursue with yet more determination the course already taken.

(3) Paragraph 105 gives the average juvenile court no workable guidance but makes impossible demands. The apprehensions among experienced judges and welfare workers upon the introduction of this provision have proved justified. In very many cases the courts, to give a *bona fide* decision

as to the stage of an adolescent's development or the nature of an offence as youthful mischief, need the expert help of a juvenile psychologist or psychiatrist. In the overwhelming majority of trials of adolescents, however, no experts are consulted, simply because there are not enough of them. Only the big cities and university towns have available a sufficient number of experts with special training in juvenile psychology and psychiatry; in the small towns and the country this is rarely the case. As a result, only the graver and gravest offences of adolescents are assessed by experts who will then mostly find that the adolescent offender's lack of maturity will justify the application of the juvenile law. This inadequate consultation of experts is partly due to a disinclination, not confined to the German judiciary alone, to ask too often for expert assistance. But the provision of paragraph 105 makes impossible demands upon the expert as well, since the guidance it gives is not realistic.

Lastly, it has been asked with some justification why the law should compel the judge to make such laborious investigations and assessments of the offender's personality since, if he subsequently passes a sentence of imprisonment according to the general penal law, this will anyhow be served in a juvenile prison by virtue of paragraph 114.

Before substantiating the remarks about the uncertainty of the practical application of paragraph 105, it should be indicated what the extension of their jurisdiction has meant for the juvenile courts. In 1955, the juvenile courts in the Federal Republic convicted 33,882 young persons and 64,665 adolescents, that is to say a total of 98,574 offenders between the ages of fourteen and twenty-one years. In the same year, the ordinary criminal courts convicted 432,030 adults. Thus, the juvenile courts in 1955 had dealt with approximately 23 per cent. of all convictions, which shows a quite extraordinary increase in the importance of these courts from the point of view of criminal policy since 1st October, 1954. The case-load of the juvenile courts, prosecutors, and Juvenile Court Assistance Departments of the Juvenile Welfare Offices has been trebled by the extension of their jurisdiction over adolescents. Since these adolescents form roughly two-thirds of the case-load, they have in recent years advanced to the centre of the administration of the juvenile law by sheer weight of numbers. The Departments of Justice were confronted with the necessity to increase the numbers of judges and prosecutors accordingly, taking into consideration that the administration of justice in the case of offenders under age means a lot more work than in the case of adults where the German penal law is hardly aware of its reformative tasks which it certainly has not developed to any extent. The necessary consequences with regard to staff policy have by no means been drawn everywhere in the Federal Republic, with the result that many

judges and prosecutors are overworked, and the educational objectives of the juvenile courts suffer accordingly. The increase in the numbers of judges and prosecutors made the problem of special additional training for these new tasks a particularly urgent one. For the last three years this has been tackled by the German Association for Juvenile Courts and Juvenile Court Assistance with financial support from the Federal Government and the *Länder* ministries. Roughly 650 workers in the administration of the juvenile law have so far completed an introductory training course lasting six days.

A few figures will now show the wide local divergencies among the courts in the application of juvenile law to adolescents. In 1955 the percentage of adolescents convicted under juvenile law in the individual *Länder* was as follows: Baden-Württemberg, 14·5; Bavaria, 14·1; Bremen, 38·2; Hamburg, 44·3; Hesse, 28·2; Lower Saxony, 28·5; N. Rhineland-Westphalia, 27·8; Rhineland-Palatine, 15·1; Schleswig-Holstein, 43·3, with an average of 22·2 per cent. for the Federal Republic as a whole. Individual investigations in Lower Saxony have shown a difference in the application of juvenile law between individual magistrate's court districts vacillating between 10 per cent. and 90 per cent. It need not be stressed that such divergencies in court practice are intolerable. It has rightly been asked whether the constitutional maxim of equality before the law can still be said to apply, and it has been observed that differences of this kind are bound to undermine all faith in the administration of justice by the juvenile courts among the population in general and among the young people themselves.

A similar picture results from an investigation of the application of juvenile law to individual offences. The Federal Criminal Statistics (1955, I) show, for instance, the following percentages: murder, 55·6; voluntary manslaughter, 71·4; negligent homicide, 15·8 (if due to accident on the road, 12·7; if due to other causes, 30·3); injury to the person, 12·9 (if due to accident on the road, 8·5; if due to other causes, 15·0); larceny, 39·4; robbery and extortion, 57·8; receiving, etc., 32·4; fraud, 23·0; sexual crime, 61·7; sexual intercourse between males, 65·6; rape, 50·0; indecent assault against children, 79·5.

An analysis of these figures shows that:

(*a*) disregarding all convictions connected with modern traffic conditions, juvenile law is applied to about 40 per cent. of all adolescent offences, with a tendency towards constant increase;

(*b*) the more serious the offence, the more frequent is the application of juvenile law, for reasons outlined above.

The question now arises: are those courts on the right track who tend towards a more frequent application of juvenile than of general penal law to adolescents? The unanimous view of more than 500 people who attended

the Tenth German Juvenile Court Conference is that they are, for the following reasons:

(i) Criminological research into the adolescent age-group of recent years has confirmed what those who attended the Sixth Juvenile Court Conference (Heidelberg, 1924) had known long ago: the great majority of offenders between the ages of eighteen and twenty-one have not attained the maturity of an adult and therefore ought not to be dealt with under the general criminal law. It is precisely among the disorderly [2] adolescents where we find a marked number of cases in which mental, moral, and even physical development has been retarded.

(ii) The experience of probation officers and juvenile prison officers concerned with the training of adolescents has proved conclusively that persons under age convicted by the courts under the general penal law show in their overwhelming majority during the course of their training a similar lack of maturity as those adolescents with whom the court has dealt under juvenile law. In almost every case in which general penal law has been used, the court had failed to recognize the true immaturity of the adolescent. This, again, shows clearly that even in juvenile proceedings the trial before the court is of little use in assessing the young offender's personality, but may be a source of many errors.

(iii) In fields other than that of the criminal law it has long been more or less acknowledged that persons between the ages of eighteen and twenty-one, though more mature than young persons, have by no means attained the maturity of an adult. The German Civil Code provides for full legal capacity only after completion of the twenty-first year, and the capacity to vote for, and sit in, Parliament, is similarly regulated by the Federal Electoral Act. Persons concerned with vocational training have recognized for some time now that the eighteen–twenty-one age-group constitutes a special problem; the same is true for undergraduates taking a college education; even the military education authorities have recently made special provision for the peculiarities of this age-group.

The members of the Tenth German Juvenile Court Conference were unanimously agreed that paragraph 105 should be replaced as soon as possible by a provision subjecting in principle all offenders between the ages of eighteen and twenty-one to the juvenile law, exceptions, if any, to be made only in restricted and strictly defined conditions involving no new assessment of personal maturity. If an adolescent proves unsuitable for a particular sanction, the judge responsible for its execution is to have discretion to order his transfer to an ordinary prison.

[2] See footnote, p. 208.

To illustrate the present picture, here are a few more figures to show the extent to which the individual sanctions of the juvenile law are imposed upon adolescents. Of the 14,380 adolescents convicted in 1955 under juvenile law in the Federal Republic, 21·3 per cent. were sentenced to juvenile imprisonment. 69·3 per cent. of these were given a fixed sentence between six months and one year. 55·3 per cent. of these short-term sentences were served, while in the remaining cases execution of sentence was suspended upon probation. Though the number of indeterminate sentences of juvenile imprisonment among the remaining 50·7 per cent. is not given, the Federal average is estimated at just over 50 per cent. Since almost all *Länder* provide that a sentence of imprisonment under the general penal law is to be served in a juvenile prison by persons between the ages of eighteen and twenty-four (paragraph 114), these prisoners form approximately 80 per cent. of the juvenile prison population. Since 1937, therefore, the German juvenile prison has become an institution primarily for prisoners between the ages of eighteen and twenty-four, and its methods of training are primarily adapted to this age-group, without, however, neglecting the younger inmates and their special needs.

During the same year, 1955, measures of education and training were ordered in 10 per cent., and means of correction in 77·7 per cent. of all cases. Figures showing to what extent individual educational measures and corrective means have been used are unfortunately lacking, but it is to be expected that Federal statistics of future years will publish these figures in detail. The means of correction most frequently ordered in the case of adolescents would appear to be the financial contribution to a charitable institution. However, *Jugendarrest*, especially in the form of continuous detention, is increasingly ordered for adolescents, since it has been shown that this detention for the purpose of quiet reflection has been even more successful with this age-group than with young persons proper: the average adolescent has just that additional grade of maturity to make him respond to juvenile detention and its specific educational methods.

The immediate effect of the Tenth Juvenile Court Conference is sure to be an increased application of juvenile law to adolescents by the courts within the framework of paragraph 105. It has been agreed that it would be no major catastrophe if once in a while it were used erroneously, but that it would be most undesirable if it were not used where it should have been. It was most encouraging to observe how judges transferred from the ordinary criminal courts to the juvenile courts, who in the beginning had regarded the possibility of dealing with adolescent offenders under the juvenile law with the utmost scepticism, had come to recognize the superiority of this branch of the law as an instrument of criminal policy for the protection of society

even in respect of grave offences, and how passionately they underlined this point of view in Marburg. In fact it has been shown that, in the great majority of cases where general criminal law is applied to an adolescent, the courts will pass a prison sentence of the old style only for a short term (not exceeding six months) unless they let him off with a fine.

We cannot expect immediate reform of paragraph 105 by way of Federal legislation. The preliminary work on the reform of the general criminal law by the Commission of Experts of the Federal Ministry of Justice is too far advanced to permit of any partial reform at this stage. There will be need to bring the sanctions of the juvenile law in line with these new reform proposals, with the possible result that the present rigid demarcation between the juvenile and the general penal law, as represented by the twenty-first birthday, will largely lose its practical significance. What is envisaged is a series of new sanctions of a social and constructive nature in the field of the general penal law which may well mark the turning point where the present-day fundamental conflict between the general and the juvenile law is resolved into a mere difference in degree.

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PLANS TO REFORM THE SWISS JUVENILE PENAL LAW [1]

By ERWIN R. FREY (Zurich)[2]

Switzerland, unlike most other countries, has no special Juvenile Court Act with comprehensive provisions in respect of the substantive and procedural juvenile law. In view of Article 64[bis] of the Federal Constitution, the Federal Parliament, lacking competence to legislate in the sphere of juvenile criminal procedure and the organization of juvenile courts, was limited to a unified regulation of the substantive juvenile law. This was achieved by the Swiss Federal Penal Code. The substantive juvenile law is contained in Section iv (Articles 82–100) of the General Part of that Code which came into force on 1st January, 1942. Conversely, apart from a few general clauses contained in Section vii of the Third Part, the organization of the courts and the procedure in cases of juvenile crime remain subject to *cantonal* legislation, and there are considerable differences between the various *Cantons*. There can be no doubt that such *cantonal* discrepancy in the regulation of procedure and in the organization of juvenile courts is a tremendous obstacle to a unified practice in the treatment of juvenile crime in Switzerland. It sets at the same time a limit to possible reform of the juvenile law. Unification throughout Switzerland of the procedural juvenile law as well, however desirable in many respects for practical and theoretical considerations, appears unattainable for the next few decades at least. This limitation of legislative authority to the substantive juvenile law leaves the Federal legislature in the present reform of the juvenile law substantially less discretionary powers than those enjoyed by, *e.g.*, the British legislature in respect of the Children and Young Persons Act, 1933, or the German legislature in respect of the Juvenile Court Act, 1953.

People abroad may wonder why a revision of the juvenile law in Switzerland at the present moment should be necessary at all, since the Swiss juvenile law has been in force for less than fifteen years. However, it must not be overlooked that the preliminary scientific work by the Commissions of Experts in preparation of the Swiss Penal Code had in the main been com-

[1] The law under discussion is the juvenile *penal* law (*Jugendstrafrecht*), *i.e.*, it only applies where an offence as defined by the general Penal Code has been committed. This should be borne in mind, though the word ' penal ' is omitted in this translation to avoid tedious repetition (transl.).

[2] Translation by Dr. A. Schwarzschild (London).

pleted even before the First World War. The subsequent lengthy parliamentary deliberations which extended to the year 1937 brought no fundamental innovations, at least not in the sphere of the juvenile law. As a result, the fundamental structure of Swiss juvenile law is based upon a state of scientific knowledge that dates thirty to forty years back. In the meantime, new aspects have arisen in the investigation of the personality of the criminal, and of the juvenile delinquent in particular. Above all, criminal biology has taught us to recognize the connections between certain forms of early delinquency and incorrigible habitual crime. The methods of criminological prognosis of recidivism, for instance, have been refined to an extent that the reliable prediction of the probable future social development of a juvenile delinquent seems possible even at a tender age. The personality of the recidivist with early signs of a criminal disposition (*frühkrimineller Rückfallsverbrecher*)—a concept practically unknown forty years ago—is to-day not only the focus of criminal-biological research, but at the same time one of the most important problems of criminal policy.

Swiss juvenile law as at present in force gives only very inadequate consideration to this development. In particular, provisions are at present completely lacking for an organic grafting of the penal measures provided by the adult law upon the juvenile law, which is indispensable for an effective treatment of the recidivist with early manifestations of a criminal disposition. Reform of individual sections of the Swiss juvenile law, which I had described as necessary as early as 1950 in my book, *The Reform of Penal Measures with Regard to Precocious Criminals*,[3] could therefore be no longer avoided. This is only part of an extensive reform of the Swiss Penal Code in general which refers above all to the system of the various forms of punishment and other measures, preventive or corrective, and their interrelation.

The Swiss Federal Department of Justice has not failed to realize the need for such reform, and in summer 1954 inaugurated the revision of the law by appointing a Commission of Experts. A special sub-committee of this Commission is concerned with the revision of the juvenile law. The most important provisions of a Revised Draft Code have in the main been fully debated there in the course of a first reading, so that the basic structure of the juvenile law of the future can be distinguished already to-day. Nevertheless, numerous individual questions still remain open; above all, one cannot predict what kind of changes may be made to the Draft as agreed by the Commission of Experts at a later stage in the course of the parliamentary debates. This is why I have considerable misgivings about complying with the request of the Editors of this Journal to write a contribution on the reform

[3] See the review in *Brit. J. Delinq.*, Vol. III, No. 2, pp. 132 ff. (Ed.)

of the Swiss juvenile law for this special issue at the present juncture. For what I am going to say about the state of affairs in Switzerland can, for the reasons mentioned above, be no more than a kind of interim statement based on the present stage of the work of revision in Switzerland (summer 1956). Further, I shall have to confine myself to stressing, among the wealth of problems under consideration, some few points which are, as matters of principle, of a significance transcending the peculiarly local conditions of Switzerland.

By way of introduction, a few observations on the *structure of Swiss juvenile law as at present in force* may not be out of place.

The Swiss substantive penal law as applying to persons under the age of eighteen is governed by two principles: it is a Special Law (*Sonderrecht*) and it is an Offenders' Law (*Täterrecht*).

Swiss juvenile law is a Special Law in the sense that persons under eighteen years are in all circumstances liable only to such measures as are provided by the juvenile law, no matter what kind of offence they have committed. Any imposition of any penal sanction provided by the adult law is excluded.

Swiss juvenile law is an Offenders' Law in the sense that all sanctions of the juvenile law without exception (both long-term measures of education and care and short-term so-called disciplinary penalties) are selected with regard to the personality of the young offender. There are no sanctions in the selection of which the *actus reus* and *mens rea* of a particular offence is relevant to any extent, as it is for instance in the case of the *Jugendstrafe* (juvenile imprisonment) under paragraphs 17 ff. of the German Juvenile Court Act, 1953.

These two characteristics lead to three major consequences:

(1) Swiss juvenile law is completely lacking in a provision regarding the so-called *discernement*[4] which still exists in foreign juvenile law, in particular the German juvenile law, as provided by paragraph 3 of the German Juvenile Court Act, 1953.

(2) Swiss juvenile law fixes the lower limit of criminal responsibility at the age of six years—a very low level in comparison with most foreign Juvenile Court Acts. This has the great advantage of providing for uniform treatment by the juvenile courts throughout the entire development of offenders with early signs of a criminal disposition, whose first early symptoms as a matter of experience frequently manifest themselves in apparently harmless petty childhood offences. This fixing of the lower limit of criminal responsibility under the juvenile law at such a low level can only be understood with regard to the fact that the penal law of children is cast in

[4] Capacity to form a criminal intent (transl.).

the form of a pure law of education. It has never given rise to objection in the Swiss administration of juvenile law, and during the present work of revision no party has advanced a demand to raise this age limit.

(3) A further consequence of the structure of Swiss juvenile law as a pure law of education is that all measures necessary with regard to the most effective personality treatment of offenders between the ages of six and eighteen who are in need of education and training or care and attention are imposed as independent sanctions under the juvenile law by the judge of a juvenile court. In Switzerland, the juvenile penal law applies homogeneously to all juvenile offenders and has precedence over the law of child welfare in all circumstances. It is therefore always a matter for the judge himself to order such measures of education and training as appear necessary for a juvenile offender on the basis of the substantive juvenile law; it is not the will of the legislator that he should be able to waive this duty in favour of a Child Welfare Authority.

Age Groups. Substantive juvenile law applies to all offenders who at the time of the offence have completed their sixth but not their eighteenth year. Article 100 of the Swiss Penal Code at present precludes, however, the application of the substantive juvenile law to persons who at the time of the offence have completed their eighteenth but not their twentieth year; here a mitigated adult law is applied.

Offenders between the ages of six and eighteen years are divided into two age-groups: children between six and fourteen years (Articles 82–88) and young persons between fourteen and eighteen years (Articles 89–99), and a differentiated scale of sanctions is provided for these two age-groups. All sanctions aim at re-socializing the young offender if he is disorderly (*verwahrlost*), and at protecting him if he is in moral danger, with the reminder that crime does not pay if he is neither. For the selection of the most expedient sanction and the determination of its duration it is solely the personality of the child or young person that matters, whereas the *actus reus* and *mens rea* of the particular offence is in principle of no significance. The entire procedure under the juvenile law in the case of children and young persons alike is therefore focused on an assessment of personality prescribed by law (Articles 83, 90), which comprises in particular also committal to an observation centre by the authority charged with the preliminary investigation at the time of such investigation.

The system of sanctions which applies to those between fourteen and eighteen years does not differ in principle from the penal law of children between six and fourteen years; it is merely more differentiated, in accordance with their stage of development. In the case of children and young persons alike, the system of sanctions is governed by the distinction between

those who are disorderly (*verwahrlost*) and those who are not. Those who are disorderly are liable only to long-term measures or measures of indeterminate duration (above all placing in the care of a suitable family or institution); those who are not are liable only to short-term disciplinary penalties. This strict distinction between measures of correction and prevention on the one hand, and disciplinary penalties on the other, which is consistently maintained by the law, has the consequence that Swiss juvenile law as at present in force precludes any combination of educational measures with disciplinary penalties. It must be emphasized that the relation between disciplinary penalties and educational measures in Swiss juvenile law differs in principle from that in, for instance, the German juvenile law. Since the principle of education and training is predominant in Swiss juvenile law, disciplinary penalties can be imposed upon children and young persons alike only in cases where measures of education or care are not necessary. In German juvenile law, punishment and means of correction are subsidiary to the measures of education and training. They are imposed if educational measures are inadequate (paragraphs 13, 17 of the German Juvenile Court Act, 1953). In the German administration of the juvenile law the imposition of means of correction is predominant; it forms approximately 90 per cent. of all cases, whereas the proportion of educational measures as against the total of all sanctions imposed under the Swiss juvenile law is considerably higher.

So much on the basic structure of Swiss juvenile law as at present in force. Only one more peculiarity remains to be mentioned: any measure of education and training can be substituted for any other at any time while it is being carried out, if this is in the interest of the child or young person (Articles 86, 93, Swiss Penal Code).

As for the most important *proposals for reform* based on the present stage of deliberations in the Commission of Experts, it should be said in advance that the basic structure of the juvenile law as at present in force is not to be touched. In the future as in the past and present the concept of education will remain the guiding principle for all sanctions under the juvenile law. The law is indeed to express this even more clearly than before, by abolishing, in particular, the last remaining link between the measure imposed and the gravity of the offence committed, which at present still exists by virtue of Article 91, No. 3. The rigid distinction between educational measures and disciplinary penalties is maintained, but the law in future will allow some combination within certain limits. Otherwise, the reform aims at the greatest possible simplification everywhere. Within the framework of guarantees for the rights of the person required by the principle of the rule of law, the judge is to have the greatest possible discretion in the selection of the most expedient sanction.

The most important points under consideration are the following:

(1) The upper limit of the application of the penal law of children is to be raised from the fourteenth to the fifteenth year of age. This revision has been unanimously agreed by the Commission of Experts to bring the law in line with *cantonal* school legislation, which almost everywhere has raised the school-leaving age to fifteen years, and with factory and apprenticeship legislation where to-day the age of fifteen is likewise relevant. The substantive penal law of children (Articles 82–88, Swiss Penal Code) thus will in future apply to the nine age-groups between six and fifteen years, while the substantive penal law of young persons will apply without restriction only to three age groups, *i.e.*, those in their sixteenth, seventeenth and eighteenth years.

(2) The legal requirements for the imposition of measures of education and training on the one hand, and of disciplinary penalties on the other, will be re-defined. As we have seen, Swiss juvenile law as at present in force is based on a rigid division of children and young persons into those who are disorderly or in moral danger, and those who are not. The former are liable exclusively to measures of education and training, the latter exclusively to disciplinary penalties. This has proved inexpedient in practice. The rigid division of all young offenders into these two categories, on the one hand, is at variance with the facts as shown by criminal biology, and on the other, puts fetters on a flexible administration of justice by preventing the imposition of disciplinary penalties upon those in moral danger in all circumstances, even where they would be expedient, as ' shock-therapy ', one might say, from a psychological and pædagogical point of view. Further, this rigid dualism precludes any combination of educational measures and disciplinary penalties. It is impossible, for instance, to impose a penalty of detention or a fine by way of ' reminder ' upon a young offender in moral danger who has been placed under the supervision of an education authority, but was allowed to remain with his own family. It is equally impossible to impose a penalty of detention upon young persons who, while in the care of a family or institution, commit further acts of delinquency. Since they are in moral danger or disorderly, and indeed have given new proof of this state of affairs by their further delinquent acts, the judge may merely confirm once more the order of care already made; that is to say, nothing can be done for the youth.

In future, the main test for imposing educational measures is to be the existence, or for imposing disciplinary penalties the absence, of a special need of education and training. Accordingly, Article 91 (1) which lays down the principle for the imposition of educational measures is to be worded roughly as follows:

'If it has been established by investigation (Article 90) that the young person is in need of special educational care, especially if he is in substantial moral danger or disorderly, or if he presents a difficult educational problem, the court is to order of the following measures the one most appropriate to the condition of the young person: supervision by an education authority, placing with a suitable family, or committal to an institution of education and training.'

Correspondingly, Article 95 (1) which defines the requirements for imposing a disciplinary penalty would be re-stated:

'If it has been established by the investigation that the young person is not in need of special educational care, and if his condition further does not require any special treatment, the court will reprimand him, or punish him by a fine, or by detention of not less than one day nor more than one year.'

(3) Measures of education and training and disciplinary penalties may be combined within certain limits. The more flexible formulation of the legal requirements for imposing measures of education and training on the one hand, and disciplinary penalties on the other outlined in (2) above will in future allow combination within certain limits of these two sanctions of the juvenile law which differ in purpose. In particular, young persons placed under the supervision of an education authority are in future to be liable at the same time to a penalty of detention (which, however, is not to exceed four weeks) or to a fine.

Further, a new offence under the juvenile law is to be created which provides for the punishment of young persons who consistently and wilfully refuse to comply with directions given to them or with other educational measures imposed upon them. Modelled to some extent upon paragraph 11 (2) of the German Juvenile Court Act, 1953, the relevant words of the statute will read something like this:

'If a young person consistently and wilfully fails to comply with an educational measure or with a direction given to him, and if it appears useless to order further measures of education and training, he may be punished by a fine or detention not exceeding four weeks.'

(4) Article 97, providing for a suspension of sentence (*Aufschub des Entscheids*) is to be repealed. Swiss juvenile law as at present in force contains in Article 97 under this heading the following provision:

'If it cannot be ascertained whether a young person is morally disorderly, depraved, or endangered, or whether he is in need of care

and attention, the court may postpone the decision and place the young person under protective supervision. He is put on probation for a period not exceeding three years.

If the young person's conduct is bad during the probation period, the court will order detention, or a fine, or one of the measures provided for young persons.

If the young person's conduct is good until the end of the probation period, the court will order the entry on the criminal record to be deleted.'

In the opinion of most experts, this institution of suspended sentence has not proved a success in the administration of Swiss juvenile law. The separation of conviction and sentence, largely taken over from Anglo-American law (and, it may be added, recently demanded on the largest scale for criminal proceedings against adults as well by the supporters of *défense sociale*) has shown itself a foreign body in the system of Swiss substantive and procedural juvenile law. In the case of thorough personality study, which the law makes obligatory during the preliminary investigation, the experienced judge as a rule will be able to ascertain at the time of the finding of guilt whether or not a young person is particularly in need of education, and which one of the sanctions provided in the differentiated catalogue of the law offers the best chance of successful personality treatment in the individual case. If the judge is mistaken once in a while in his personality assessment, and if he imposes upon conviction a sanction which later proves to be inappropriate, Article 93 affords ample scope for subsequent modification.

Conversely, if the judge has an opportunity right from the start to postpone his decision in respect of the measures to impose, as he can to-day by virtue of Article 97, temptation will be strong to neglect personality study during the preliminary investigation, confident that the true personality picture will emerge in the course of subsequent and more thorough study during the probationary period. (This danger is very real; the administration of Swiss juvenile law has given drastic proof that *cantonal* juvenile courts with well-organized methods of personality study will make use of a suspended sentence either not at all, or only in the most exceptional cases, while Article 97 is a convenient means for a number of other *Cantons* to transfer personality study from the stage of preliminary investigation, where it belongs for reasons of principle and practical considerations to the stage of probation after conviction, thus shifting it on to different authorities. Article 97 has rightly been called a legal provision that weakens the judge's feeling of personal responsibility.)

Apart from this, the suspension of sentence, which anyway is possible

only in case of doubt (where, accordingly, the suspicion of substantial moral danger or even disorderliness would as a rule appear well founded right from the start), leads to the most undesirable consequence that measures of education and training, whose necessity could have been recognized without further ado at the time of the first hearing, will be imposed too late; that is to say, at the end of the probationary period.

The Commission of Experts has resolved by a large majority to remove this institution altogether from the law. (Swiss experts were therefore somewhat astonished when the new German Juvenile Court Act, 1953, paragraph 27, newly introduced this suspension of sentence under the heading ' Suspended Imposition of Juvenile Imprisonment (*Jugendstrafe*) ', largely on the model of Article 97 of the Swiss Penal Code as at present in force, and this at a time when the demand to abolish this institution had already been advanced in Switzerland. As far as I know, however, opinions as to the expediency of this legal provision are largely divided in Germany too, and most juvenile courts make only rare use of paragraph 27.)

(5) The treatment of young offenders who show early signs of a criminal disposition and present the greatest educational difficulties is to be newly regulated and raises the problem of juvenile preventive detention. Investigations made some time ago and described in detail in my book, " *Der Frühkrimineller Rückfallsverbrecher* ",[5] as to the connections between early criminal manifestations and recidivism and the personality type of the recidivist with early signs of a criminal disposition, have shown that re-socialization by means of the educational measures at present provided by the Swiss Penal Code is impossible in the case of approximately 20–25 per cent. of all disorderly juvenile offenders, *i.e.*, approximately 3–4 per cent. of juvenile offenders as a whole. Such personality types invariably attract attention through specific symptoms of a-social behaviour in childhood or early adolescence. The offences they commit are early symptoms of a criminogenic disposition predominantly determined by biological factors; they are therefore merely the first links in a chain of recidivist crime which may frequently extend throughout life. The development of an habitual criminal thus will never start suddenly, but is heralded as a rule by specific early manifestations of a-social or antisocial behaviour. It is a matter of experience that the later development of habitual criminality is more probable, the earlier such personality types start on their a-social and criminal phase.

The most important factors in the causation of precocious criminality are certain forms of psychopathy and certain combinations of these forms which are apparently determined by heredity. All incorrigible recidivists—with the exception of a numerically insignificant group of sex-offenders—are

[5] See *Brit. J. Delinq.*, Vol. III, p. 132. (*Ed.*)

psychopaths and at the same time show signs of early criminality. For every individual form of psychopathy or combination of several forms there exists a typical well-defined set-up of manifestations of a-social and criminal behaviour which does not exist in the same way in the case of any other form of psychopathy or combination of several forms. Furthermore, such specific manifestations of a-social behaviour show continuity all along the line at every stage of personality development. As a rule it is possible to recognize psychopaths with the greatest predisposition to recidivism by well-defined manifestations of a-social behaviour as early as their sixteenth year of age approximately.

The vast majority of those who later become recidivists are therefore distinguished from very early youth not only by specific forms of educational problems, but at the same time by specific forms of precocious criminality. In particular, the criminal intensity of an incorrigible recidivist remains as a rule constant throughout all stages of his personality development. It is inherent in the personality and to a large extent independent of extraneous factors. The existing techniques of early prediction make it possible to forecast with a considerable degree of accuracy not only that a criminal youth will probably grow up to be an habitual criminal, but in most cases also the specific forms his criminality will take.

The present law only quite inadequately takes note of this personality development by which the young delinquent becomes the incorrigible habitual criminal. It treats early delinquency and habitual crime as social problems which, as it were, are quite independent of one another, and combats them with independent measures by no means working together in harmony. At present, a really special treatment of those young criminals who are most difficult to re-socialize does not exist, either in the field of the juvenile or of the adult penal law.

As for the juvenile law, the provision of Article 91 (3) of the Swiss Penal Code can by no means be described as a special measure of this kind. Article 91 (3) reads:

> ' If the young person is particularly depraved, or if he has committed a felony or a very serious misdemeanour revealing a high degree of potential danger to the community, he is to be committed to an educational institution where he is to be segregated from the other inmates. In this case he is to remain in the institution until improved, but not less than three years nor more than ten years.'

The Swiss Commission of Experts are unanimously agreed that the present state of affairs is quite unsatisfactory.

The segregation provided by Article 91 (3) is not carried out in practice

in a single educational institution; it is in fact absolutely impossible to put it in practice. At present, there is no institution in Switzerland that would be suitable for the special treatment of these most difficult educational problems. As a result, these juveniles are committed to ordinary institutions of education and training of the most various types. Everywhere they are a heavy burden for the staff because they lower the entire level of education. At the same time, their admission necessitates a number of preventive measures restricting freedom of movement which are not required at all as far as the great majority of the other pupils are concerned.

The sub-committee of the Swiss Commission of Experts charged with revising the juvenile law was agreed from the start that a special statutory measure was needed to provide for the special treatment of this group in special institutions. This will achieve a double purpose: it will relieve ordinary institutional care of the most difficult elements, thus making possible a more liberal and efficient organization for the benefit of the other pupils, and it will provide at an early stage for special treatment, better adapted to their personality type than ordinary institutional education, of the hard core among all young criminals in respect of whom present-day methods so far have failed.

The most efficient methods of re-socializing this relatively small but most heterogeneous group of young criminals have to a large extent still to be worked out. This is only possible if these cases are concentrated in special institutions. It has been calculated that two institutions of this type with about 200 places (assuming an average period of four years' institutional care) would be sufficient for the whole of Switzerland. Preliminary work to set up these institutions by way of inter-*cantonal* agreements between a number of *Cantons* is at present in progress. It would lead too far to describe in detail the proposals to organize this special institution for the most difficult educational problems. Though its main purpose must be to serve the preventive detention of the young, it is yet to be first and foremost an institution of education and training in which the pupils are subjected to post-education of a particularly intensive and differentiated kind. The attempt at re-socialization by all possible means is to be predominant. Intensive co-operation of the child-psychiatrist and educational therapist, according to the pupils' personality type, will be indispensable. Specially constituted observation centres attached to the institutions are to be prescribed by law. Even though the selection is to be strict, the range of personality types of persons under age to be committed to the special institution will remain very wide. Substantially, it will comprise three groups:

(1) Persons under age who would be intolerable in the ordinary educational institutions but who, in the course of a lengthy period of

care and special treatment in the ' institution of juvenile preventive detention ' may improve to the extent that they can later be placed in ordinary educational institutions or even be conditionally discharged.

(2) Persons under age who, though they are not amenable to influence so as to achieve substantial improvement, yet are not of potential danger to the community to the extent that their permanent detention would appear inevitable.

(3) Persons under age who are absolutely unyielding to influence and at the same time dangerous to the community to an extent that their discharge would be unwarrantable. These are detention cases in the narrowest sense; here it is merely a question of expediency at what time one of the possible forms of detention provided for adults should be directly substituted for juvenile preventive detention.

It is anticipated that the law will define this new measure as follows:

If the young person is particularly depraved, or if he is dangerous to a high degree, and if the measures provided by Articles 91 and 92 have not proved successful, or if such measures in view of the personality of the young person appear useless or inappropriate from the start, the court will order him to be committed to an institution for the education of young persons with particularly difficult problems.

A young person may only be committed to such an institution upon a special report.

The period of care is to last for at least one year and is not to exceed the completion of the twenty-fifth year of age.

Furthermore, the revised draft contains a proposal which, however, has not yet been finally resolved, for a further provision of this article, according to which young criminals who have completed their twenty-fifth year of age and whose discharge is unwarrantable in view of their high potential danger to the community may be ordered, upon further reports, to be immediately transferred to preventive detention under the adult penal law (Article 42, Swiss Penal Code). A provision of this kind would, as it were, form a bridge between the juvenile and the adult law in respect of young criminals whose re-socialization is quite hopeless and who form the ' hard core ' among the habitual criminals. In future, these may be immediately transferred from ' juvenile preventive detention ' to detention for habitual criminals as provided by the adult penal law. When all measures of education and training have failed, the principle of reform will have to yield to that of mere prevention and the protection of society. No doubt there is a group, however small, of quite incorrigible young criminals who are dangerous to the community to such a high degree that even a conditional discharge is un-

warrantable with regard to the needs of society. In view of the improved methods of early criminological prediction there are, in my opinion, no objections in principle to such a direct transfer from juvenile detention to preventive detention. There is no reason why a young criminal who has proved his complete incapacity for re-socialization and his potential danger to the community by constant recidivism during adolescence should, on reaching the upper limit of juvenile detention, be set at large and thus given an opportunity to demonstrate, by the commission of further crimes, to the ordinary criminal courts as well that he really is a danger to the community. This new legal provision would close the gap between the end of juvenile detention as the be-all and end-all of all measures of the juvenile law, and the beginning of the ordinary detention of adult habitual criminals.

At the present moment, however, one cannot foresee whether this revised draft will later obtain the force of law. It is possible that objections will be raised in the Commission of Experts, and above all in the course of subsequent parliamentary debates in respect of the reliability of early criminological prediction, and that therefore a direct transfer from juvenile to ordinary preventive detention will be rejected as premature at least for the present time.

(6) The substantive penal law in respect of persons between the ages of eighteen and twenty is to be newly regulated. I have already mentioned that Article 100 of the Swiss Penal Code as at present in force provides that persons between eighteen and twenty years are subject to a mitigated form of the adult penal law, but that they are not liable to the penalties and measures of the juvenile law. However, theory and practice in Switzerland, as in other countries, have been agreed for a long time that this solution is unsatisfactory. As early as 1950 I have advanced, in my book, *The Reform of Penal Measures with Regard to Precocious Criminals*, the demand to extend the application of the substantive juvenile law to at least part of the eighteen–twenty age-group. Meanwhile, this demand has been fulfilled in Germany by the creation of paragraph 105 of the Juvenile Court Act of 1953. The revision of Article 100 aims at a similar solution for Switzerland with, however, two substantial differences:

The Swiss Commission of Experts, in its overwhelming majority, is of opinion that the substantive juvenile law with its differentiated scale of sanctions is much better adapted to dealing with the large majority of personality types in the group of adolescents than the adult penal law. Therefore the application of juvenile law to adolescents will become the rule in Switzerland, while that of the adult penal law will be an exception possible only in certain conditions strictly defined by the law.

Furthermore, the Commission of Experts is of opinion that in those few

exceptional cases where sanctions of the adult penal law are imposed on minors of eighteen–twenty, the accused is to be tried not by the judge of a juvenile court, but by the ordinary criminal courts. It is argued, rightly I think, that the activities of the juvenile courts, which in many Swiss *Cantons* are specialized and independent of the organization of the ordinary criminal courts, would be discredited if in future they would be compelled to impose imprisonment and penal servitude, *i.e.*, measures of the adult penal law. However, in view of *cantonal* autonomy in the field of procedure and the organization of the courts as outlined in the first paragraph of this contribution, the implementation of this demand will encounter constitutional difficulties.

According to the deliberations of the Commission of Experts to date, the substantive law contained in Article 100 is to be re-defined as follows:

> If the offender at the time of the offence has completed his eighteenth but not his twentieth year of age, the provisions of the law of young persons (Articles 89–99) will apply. If it is to be assumed, however, on the basis of investigation of the accused's personality that he will not be amenable to any one of the measures provided by the law of young persons, he will be liable under the ordinary penal law with the following restrictions. (What follows are substantially the present provisions of Article 100 in respect of a mitigation of the adult penal law.)

Conclusion

Swiss juvenile law after revision will present a well-articulated and consistent system of sanctions which makes possible effective treatment of all types of offenders distinguishable at the present stage of criminal-biological knowledge within the category of young delinquents. This system is governed by the principle of re-socialization. The various measures of education and training, completely independent of the *actus reus* and *mens rea* of the particular offence, are predominant; disciplinary penalties can only be imposed where there is no need for educational measures.

Thus the juvenile law has a completely one-track system of sanctions; the object of the sanction—whether it be an educational measure or a disciplinary penalty—is invariably to treat the offender and at the same time to dispose of the offence. In no case is it possible to impose, in addition to the requisite measure, some other punishment in token of atonement for the offence, such as is still largely the practice under the adult penal law.

THE WORK OF THE CHILDREN'S DEPARTMENT IN RELATION TO THE JUVENILE COURT

By ARTHUR COLLIS (Birmingham)

The Children Act, 1948, followed the recommendation of the Curtis Committee that the most effective way of securing a radical improvement in the standard of care of children deprived of a normal home life would be to bring responsibility for all such children (other than those in the care of voluntary societies) under a new local government department, and laid down that county councils and county boroughs were to set up a children's committee and appoint a children's officer to administer the work of the committee under the Act.

There are two main streams of children coming into care—those who have no parent or guardian, or who have been abandoned or lost, or whose parents or guardians are unable to care for them properly, and in the interest of whose welfare the local authority needs to intervene (Sect. 1, Children Act, 1948); and those who are committed to the care of the local authority as fit persons under the provisions of the Children and Young Persons Act, 1933. The children's committee is also responsible for local authority functions under the Adoption Act, 1950, and the child life protection enactments of the Public Health Acts which refer to the care of children placed by their parents with foster-parents for reward.

Sect. 39 (1) of the Children Act transferred the functions of local authorities in relation to Parts III and IV of the Children and Young Persons Act, 1933, from local education authorities to the children's committees, and the following are the principal responsibilities of children's officers having a bearing on the work of the juvenile court.

(1) The care of juveniles committed by fit person orders to the care of the local authority as a consequence of having been found guilty of an offence (Sect. 57), or having been found in need of care or protection (Sect. 62), or beyond control (Sect. 64), or having failed to attend school regularly (Sect. 40, Education Act, 1944), or having been committed by an adult court following conviction of a parent for an offence mentioned in the First Schedule of the C. and Y.P. Act, 1933, or under Sect. 10 of that Act (Sect. 63).

(2) The provision of a report to the juvenile court on the home circumstances of juveniles appearing before it (unless the justices or probation committee has requested the probation officer to do so) and the provision of a report on the school record, health and character of the child (Sect. 35).

(3) The bringing before the juvenile court of any child or young person who appears to be in need of care or protection. This is a power shared by the police and the National Society for the Prevention of Cruelty to Children (Sect. 62 (2)).

(4) Subsection 2 of Sect. 62 was reinforced by Sect. 2 of the Children and Young Persons (Amendment) Act, 1952, and there is now a clear duty placed upon the local authority to cause enquiries to be made whenever information is received that a child or young person may be in need of care or protection unless it appears unnecessary to do so.

(5) Sect. 65 gives the local authority power to bring before the court any refractory child or young person (*i.e.*, up to the age of seventeen years), already in care under Sect. 1 of the Children Act, 1948, who it is thought needs approved school training.

(6) Sect. 84 (8) enables a child or young person previously committed to the care of the local authority as a fit person to be brought back before the court for committal to an approved school if his behaviour seems to warrant it.

(7) A children's officer can be made responsible for the supervision of a juvenile under a supervision order made by the court under Sects. 62, 64 or 84.

(8) The administration of remand homes and approved schools provided by the local authority under Sects. 77 and 80 will generally be part of the work of the children's officer, who will also be responsible for any reception centre provided under the Children Act which is used for the custody of children under the age of twelve who are on remand by the courts (Sect. 3, Children and Young Persons (Amendment) Act, 1952).

(9) A child or young person from an approved school can be taken into care by the children's committee and placed in a foster-home or other suitable accommodation if the managers of the school are unable to return the youngster home or find him an alternative placement (Sect. 6 (4), Children Act, 1948).

(10) Sect. 7 of the Children and Young Persons (Amendment) Act, 1952, authorized local authorities to undertake, on behalf of the managers, the supervision of boys and girls released on licence or under supervision from approved schools.

On 30th November, 1954, there were 64,560 children in the care of local authorities in England and Wales, representing roughly 1 in 200 of all

children under eighteen. During the preceding twelve months 39,498 children were received into care and 40,247 went out of care. Of the children in care on 30th November, 1954, roughly 30 per cent. were subject to a fit person order.[1] From my own experience in a large children's department and from contact with children's officers and their staffs, it is clear that, while there have been criticisms and difficulties arising from the working of the juvenile courts and related matters, the one concern which stands out above all else in the minds of child-care workers is the need for a system of child and family welfare which will bring the most effective help to bear at the earliest possible moment, with the minimum of agencies and administrative processes becoming involved, so as to reduce this steady stream of children into the care of children's departments and through the courts. An effective system of preventive work to avoid family breakdown and delinquency, with the consequent disruption in the lives of the children, must go hand in hand with satisfactory methods of treatment when breakdown occurs and, if we are to do the best in these spheres, hand in hand with an integrated system of research. I should like to return to this point later.

Whilst the introduction of an age limit of sixty-five for members of the juvenile court panel was a step in the direction of preventing justices who were unable to deal effectively with children from sitting on juvenile court benches, there would appear to be a need, if the present system is to be retained in any shape or form, to define more closely what the qualifications are which warrant a justice being placed on the juvenile panel, and it seems open to doubt whether the present system of appointing J.P.'s outside London will in fact produce people with the right qualifications. Ought not justices be asked to accept a degree of instruction before sitting on the juvenile bench? One might add—ought not the clerk of the court be required to show an understanding of the basic principles of child welfare as well as knowledge of the law? Where the magistrates lean heavily on the clerk for guidance in the conduct of the court, as they seem to in many areas, the clerk should be capable of setting the right atmosphere and of dealing with the children and young persons in such a manner that they will at least understand what is going on. There would be, I think, a considerable weight of opinion amongst workers in child care, based on their experience in caring for children who have come to them direct from their own homes and through the courts, for raising, without qualification, the age of criminal responsibility to fourteen or fifteen, and for appointing to the Child Welfare Council or similar body created in the place of the juvenile court local people

[1] 'Seventh Report on the Work of the Children's Department' (November, 1955), Home Office, H.M.S.O., pp. 157.

from the ranks of teachers, doctors and social workers with experience of working with children.

The question of the reform of the juvenile court has been dealt with elsewhere in this journal and what follows is, in a summarized form, an attempt to show what problems and difficulties have arisen in the work of a children's department in relation to juvenile court cases and connected matters and the sort of questions which the Departmental Committee might usefully investigate.

Children in Need of Care or Protection. Are the powers available to bring juveniles before the court as in need of care or protection adequate? Does the need to prove the double requirement of Sect. 61 (1) (2) of the Children and Young Persons Act, as amended by Sect. 1 of the Children and Young Persons (Amendment) Act, 1952, prevent protective action when this is clearly needed?

The requirement at present is that the child or young person must have no parent or guardian, or a parent or guardian unfit to exercise proper care and guardianship *and* is either falling into bad associations, or exposed to moral danger, or is beyond control, or is ill-treated or neglected in a manner likely to cause unnecessary suffering or injury to health. Cases do occur, especially with adolescent girls, where the girl's behaviour seems to show she is in moral danger, but at the same time the parents are doing the best within their limits to act as good parents. Children's officers could be asked to provide information about examples of this nature occurring in the work of their departments to ascertain whether there are classes of cases which would warrant alteration of the law.

Does the fact that the police, the local authority through the children's committee and the National Society for the Prevention of Cruelty to Children are empowered to bring children in need of care or protection before the court lead to unnecessary overlapping of functions? What determines which agency takes action?

The duty of the local authority to investigate cases where information is received that a child or young person might be in need of care or protection was clarified by the amending Act of 1952, but this by no means leads to a situation where an early investigation is made into all cases where a child's welfare may be endangered. The following points seem to need enquiry. Do all local government departments and all statutory and voluntary agencies dealing in any way with children know of this duty, and is there effective machinery for ensuring that the children's officer is notified when there is concern over the welfare of a child? Are workers in touch with children in other departments and agencies clear as to what are the danger signs for which they should be on the lookout? When information is received by a

children's officer about a juvenile, who it seems may be in need of care or protection, how does the children's officer determine whether enquiries are ' necessary ' in accordance with the terms of Sect. 2 of the amending Act?

Is it sufficient to learn that the N.S.P.C.C. or the police are in touch with the situation, as they have powers to bring the child before the court? Do children's officers in such circumstances ask for information from the police or the N.S.P.C.C., or from other agencies whose workers may be linked with the family? If the report is received and it is considered that action so far taken is inadequate, is further action requested from the other agency or does the children's officer then begin working on the case? If other agencies are asked to follow up, is the children's officer satisfied with the results and the type of work carried out? If the children's officer deals with the case direct, how far does this cause overlapping of agencies and over-visiting of the families? Are cases notified to the children's officer under this Section referred to the co-ordination committee for dealing with children neglected or ill-treated in their own homes? If so, at what stage and how does the co-ordination committee deal with it? What type of service does the children's department provide when enquiries are made and help given by the department? How does this work link up with the work undertaken with families when applications for the admission into care of children under Sect. 1 of the Children Act are pursued, and with the activities of the department to ensure that the duty upon the local authority under Sect. 1 (3) of that Act, to return children to the care of their parents whenever possible, is met? Does a children's department need family caseworkers on its staff and, if so, what are the implications for the training of child care workers?

Juveniles before the Court for Failure to Attend School. Is the children's officer always given notice of the intention of the education authority to bring a child before the court? Is notification left until the decision to bring the child before the court has been made or is there machinery for notifying the children's officer, or for communicating with the co-ordination committee to ascertain whether the family is known to other agencies, at a stage when the child's attendance first gives cause to suspect personal difficulties or family failure beyond the scope of the work of the school welfare or school attendance officer?

From my own experience in a large children's department with boys committed to the care of the local authority, the most difficult boys to help were those where long-term truancy was associated with other failings. This view was supported by unpublished research by the County Medical Officer of Health, who found that the children dealt with least successfully at a hostel for maladjusted children were of this kind. It would appear that failure to attend school regularly is a danger sign needing full investigation

at the earliest possible moment and this is not always done.

Juveniles 'Beyond Control'. How far do parents know what facilities are available for their help and guidance when in difficulties? How far would greater public stress on sources of help tend to undermine the sense of parental responsibility and lead to needless referrals? Would not a more comprehensive system for the early diagnosis and reporting of children in difficulties, which is inherent in the points made above, prevent the situation deteriorating to a stage where the parent has to bring the child before the court? When a case comes before the court, the child at present has to hear himself rejected by his parents and this will militate against the rehabilitation of the child with his family (The Summary Jurisdiction (Children and Young Persons) Rules, 1933 (Rule 19)).

Fit Person Orders Committing Juveniles to the Care of the Local Authority. Where a probation officer is asked to provide the home report for a juvenile court, is the children's officer always satisfied that there is sufficient information to decide whether representation should be made to the court under Sect. 76 of the Children and Young Persons Act, 1933, as amended by Sect. 5 of the Children Act, 1948, against the making of a fit person order? How far does the children's officer work in close collaboration with the probation officer and are separate enquiries sometimes made by the children's officer? If so, how could this dual investigation be avoided? To what extent are juveniles committed to the care of the local authority because of failure to meet their needs in some other way (*e.g.*, residential special school for educationally subnormal children or a school for maladjusted children)? Do the penal associations of approved schools mean that juveniles are committed to the care of local authorities where in fact the more specialized training available in the type of environment provided by approved schools would be more beneficial?

Does the power of adult courts (when convicting parents of an offence against their children) to deal with the children (Sect. 63, Children and Young Persons Act, 1933) operate satisfactorily? Is there not a tendency on the part of some adult courts in such circumstances automatically to commit children to the care of the local authority, and would not a better plan for the future of the children be arrived at by referring them to the juvenile court? Is sufficient use made of the power to commit children to care for an interim period in order to give the children's officer and other agencies opportunity to arrive at a plan whereby the children could be speedily restored to their parents—if necessary under supervision? Is there need for the length of duration of a fit person order to be made more flexible? Even although it may be explained to the parents that the order can be revoked, the initial step of removing a child from its home until the

age of eighteen may well seem like finality to the kind of parents involved in cases of neglect and deter them from thinking at the outset of rebuilding life around the children. Would it not be more constructive in certain cases for the court to be able to rule that the children were being placed in the care of the children's department in the first instance for a period of, say, six months, by which time the parents would be expected to have a home ready for them? This might avoid the loss of the home and the removal elsewhere of the parents, which sometimes takes place when children are committed to the care of the local authority.

Another aspect of the length of duration of fit person orders is the need felt in some cases for powers of supervision in the interests of a young person beyond the age of eighteen, and yet in other cases a young person in residential employment or in lodgings, who is economically self-supporting at an early age, may resent supervision up to eighteen.

The power of a local authority to return children subject to fit person orders to their own homes is legally recognized,[2] but has never been explicitly defined by law. Should the power be defined?—and should the return home be made subject to the consent of the court, which is sought in some areas but ignored in others, or should the local authority be given complete freedom of decision as they appear to have at the moment? While it would seem that a court having the power to remove a child from home, and having committed the child to the care of a local authority, should have confidence in that authority in the carrying out of the responsibilities associated with a fit person order, the position might arise where a local authority disagreeing with the decision of a court in making a fit person order would feel strongly enough to return the child very shortly afterwards to its own home. The order, of course, remains in force until revoked by a court, but the decision of the original court would to all intents and purposes be reversed.

Where a juvenile subject to a fit person order is sent to an approved school there is some doubt as to whether the fit person order is thereby revoked. Some children's officers ask for this to be done when the approved school order is made, but this point of law needs clarifying.

The powers of a local authority under Sect. 65 and Sect. 84 (8) of the Children and Young Persons Act, 1933, to bring a juvenile in care before the court with a view to the court committing him to an approved school is only operative until the young person reaches the age of seventeen. This means that children's officers are sometimes in difficulties to know how to deal with youngsters of seventeen in care who are causing considerable trouble in children's homes or hostels. Should the powers under those Sections be extended to the age of eighteen—thus differentiating between a young person

[2] ' Hereford Juvenile Court Enquiry ' (1943), H.M.S.O., Cmd. 6485, Pp. 18.

in care of the local authority and one in the care of his own parents?

Parents. An apparent anomaly in the transfer of duties under the 1933 Act to the children's committees was that the power to prosecute parents for neglect or cruelty to their children under Part I of the Act was left with the local education authority. Should this power now be transferred to the children's committee? Some children's officers would be most hesitant about supporting a change which would associate them with the prosecution of parents, feeling that this would mitigate against their work for helping families in difficulties.

Seeing how important it is to have a mutually understood and mutually acceptable policy or attitude towards a child, should not both parents be made to attend court when their child is before it? Would this mean that financial help would have to be made available to indemnify the father against possible loss of earnings and consequent detriment to the family?

It has been suggested in some quarters that, instead of having to wait until children are neglected or ill-treated to a point where much harm may have been done before parents can be taken to court to be charged with neglecting or ill-treating their children, legal provision should be made to enable parents failing to provide a satisfactory home life for their children to be brought before a court with a view to their being placed under official supervision and, if necessary, for conditions to be attached requiring them to behave in a specified way and to make specified provision for their children. Apart from the difficulty of legislating on such a point, this step does not seem to be warranted until we have tried to bring about an improvement in the effectiveness of the services available for helping and training parents of this kind, both in their own homes and in training centres, and until the result of such a policy is known.

It is not possible at present to require parents to pay for the maintenance of a child in a remand home or other place of safety, nor are contributions payable in respect of a juvenile sent to an approved school until he actually enters the approved school. The same applies to parents of a juvenile who is sent to a remand home as a form of punishment and during this time the parents may still be receiving a family allowance in respect of their child. Although the amount involved is small, it would serve to bring home to parents their responsibilities if contributions were payable for all such periods mentioned.

Reception Centres, Remand Homes, Classifying Schools and Approved Schools. How widespread is the practice, which appears to be against the best interests of those concerned, of sending juveniles to approved schools without first having remanded them for a period of observation to ascertain their suitability for approved school training? To what extent is this due

to the inability of remand homes to provide adequate facilities for psychiatric examination and how far at present are remand home reports adequate for the purpose of the court? To what extent are remand homes occupied and has the growing use of reception centres provided by children's committees for remand purposes reached a point where the use of remand homes and reception centres could be regionalized, with a consequent saving in cost and an improvement in the quality of the reports made available? Local authorities have themselves gone some way to achieving this, and further regionalization might create difficulties in the transfer of children to and from the courts.

Would the raising of the age up to which reception centres could be used for remand purposes help the regionalization or would the advent of older children on remand upset the relatively free and homely atmosphere which is the general aim in reception centres? If full observation and assessment facilities were made available in a system of regionalized remand homes and reception centres, is a subsequent period in a classifying school necessary or consistent with the welfare of a youngster committed to an approved school? Would it not be possible to carry out the assessment in the remand home or reception centre in a manner which would make classifying possible by someone with knowledge of the approved schools and details of the assessment of each boy or girl? The classifying schools have, of course, built up a large fund of information and are able to help the approved schools in many ways in dealing with difficult cases, so this particular issue would need very careful consideration from all sides.

The association of approved schools with the criminal code has inevitably affected the type of school provided and, in spite of the great progress made in removing the penal aspects of the training, particularly in junior and intermediate schools, more could be done if the schools were smaller and able to provide a greater variety of methods and environment and if psychiatric services were always readily available. There does seem to be a reluctance on the part of courts to use approved schools except in the last resort, and it is felt in the schools that many youngsters come to them too late to receive the full benefit of the help provided.

The fall in the number of juveniles in approved schools since 1952 (from 9,000 in 1952 to 7,462 at the end of 1954), and the closure of many schools, with the consequent dispersal of valuable staff, has intensified discussion about the place of approved schools in the pattern of child care, especially when many local authorities have been unable to place children who it is felt need residential treatment because of behaviour difficulties. If there is no essential difference between the needs of children who show maladjustment through delinquent acts and those whose maladjustment is shown in other

forms of socially unacceptable behaviour, cannot the two be brought together for treatment? This is not possible where the delinquent is labelled as an offender under a criminal code, but if the age of criminal responsibility were raised then both streams could be integrated into a common provision for children with behaviour problems.

In this way a child under the age of criminal responsibility needing to be removed from his home environment could be committed to the care of the local authority, who would then ascertain what would be the best placement for him. It would necessitate the ready availability of reception and assessment facilities and, if the Home Office schools dealing with children under the new age of criminal responsibility were transferred as special schools to the local education authorities, that adequate vacancies and choice of placement were available to the children's officer.

Throughout the examination of the various aspects of child care the indications are that the raising of the age of criminal responsibility to fifteen would enable a more effective system of treatment to be developed, and very briefly I would like to return to the earlier theme that care and treatment should be closely allied to prevention and research. With its wide terms of reference, the Ingleby Committee has every opportunity for examining this question in the light of the practice adopted by local authorities in carrying out the recommendation in the joint circular issued in 1950 by the Ministry of Health, Home Office and Ministry of Education that designated officers should be appointed to co-ordinate the work of the statutory and voluntary social services dealing with children neglected or ill-treated in their own homes.[3] In paragraph 114 of the Seventh Report of the work of the Children's Department of the Home Office it is stated that of the 123 designated officers appointed by local authorities 56 were children's officers, 39 medical officers, 23 clerks of councils, 4 chief education officers and one a member of council. The work of the co-ordination committees has varied considerably, but some interesting reports by children's officers have appeared which show the extent to which this valuable work has been carried under their guidance.[4] Whilst difficulties of inter-departmental relationships, professional relationships and strong personal feelings have sometimes entered into the choice of the designated officer, where the children's committee has followed through its responsibility to see that children in care are returned

[3] ' Sixth Report on the Work of the Children's Department ' (May 1951), Home Office (Appendix IX), H.M.S.O., pp. 152.

[4] Jones, B. (1955): ' A Matter of Co-operation,' *Child Care*, Vol. 9, No. 2, April 1955; A County Children's Officer (1955): ' Preventive and Rehabilitation Work of a Children's Department,' *The C.C.A. Gazette* (Official Gazette of the County Councils Association), Vol. XLVIII, No. 5, pp. 111–113; A County Children's Officer (1956): ' Co-ordination in the Interests of Neglected Children,' *The C.C.A. Gazette*, Vol. XLIX, No. 9, pp. 202–204.

wherever possible to their own parents and where the department has been able to enrol the staff to ensure that a careful sifting of applications for the admission of children into care is made and assistance on a casework level given to keep the family together if not readily obtainable elsewhere, then the children's officer would seem to be the best officer for this post. The development of preventive work in children's departments has not been empire building on the part of the chief officers, but has been the inevitable outcome of a sense of responsibility for the welfare of the children in care and a growing awareness that they could help to reduce the number of children coming into the care of local authorities and into juvenile courts.

The children's officer has readily available detailed records of the personal and family history of the very large number of children passing in and out of care, details of children passing through the juvenile courts, of those in approved schools and under after-care supervision, and if the children's officer has, in addition, the records of families dealt with by the co-ordination committee, given the extra staff needed, he is in a unique position to carry out operational research and to think in terms of delinquency control measures. Many children's officers have seen the need for such work, but staff is seldom available because of financial stringency and the need to deploy trained staff on more urgent field-work.

The extent to which co-ordination and preventive measures can be taken is well illustrated in the description of the work in the articles cited, and, through machinery of this kind, information about children and their families and relevant social data could be fed to the Child Welfare Council or similar body, which I hope will replace the juvenile court for dealing with children of school age.

RESEARCH AND METHODOLOGY

(*Continued from Vol. VII, p.* 63)

CURRENT RESEARCH. L. FACTORS OF JUVENILE DELINQUENCY IN UNDER-DEVELOPED COUNTRIES.

(1) *Name of University Department, Hospital or other Institution supplying the information:* International Children's Centre, Château de Longchamp—Carrefour de Longchamp, Paris (16e), and Department of Social Affairs of the French Ministry of Overseas Territories.

(2) *Subject of Research:* Factors of juvenile delinquency in the countries in process of development.

(3) *Under whose auspices is the research being carried out?* International Children's Centre and Department of Social Affairs of the French Ministry of Overseas Territories.

(4) *Commenced:* July 1954. *Completion expected:* end 1957.

(5) *Publications:* mimeographed documents; reprint of *Courrier*, Centre International de L'Enfance, Paris, No. 6, 1956. 'Attempt at working out a research method designed to elicit the factors of juvenile delinquency in under-developed countries.'

I. *Enquiry in Madagascar*

The pilot enquiry completed in Madagascar in June 1955 concerned 106 minors.

The Tananarive enquiry was meant to be only a *pilot enquiry without any statistical significance*. The results of the analysis may in no circumstance be interpreted as applying to the population of Tananarive as a whole. The detailed interpretation of the 106 questionnaires is solely intended to help in working out research hypotheses with a view to submitting them to the various organizations concerned with the problem, whose criticisms and recommendations are expected to contribute to establishing the final pattern to be used in Douala. The enquiry of Tananarive was up against two great difficulties: the lack of any reliable demographic information and the difficulty of finding again the minors who, brought before the courts, had been discharged.

II. *Enquiry in the Cameroons*

As to the enquiry now in progress in Douala:

(*a*) *The statistical enquiry* about to be completed enabled those responsible to establish the demographic pattern of the juvenile population. The sociological enquiry carried on simultaneously on the basis of 1/10 sampling will help to determine the special structures and circumstances of Douala.

(*b*) *Delinquents in law* will be systematically looked up in the records of the Yaoundé and Douala Courts of Justice over a period of two years, and the cases of minors heard in 1956 will be investigated.

NOTES AND CRITICISMS

Recent Reports on Juvenile Delinquency

1. *A Report on Juvenile Delinquency in India.* The Bureau of Delinquency Statistics and Research. The Children's Aid Society, Bombay. ix and 179 pp., 1956.
2. *Report of Juvenile Delinquency Advisory Committee.* Melbourne, 1956. 103 pp.
3. *Bekämpfung der Jugendkriminalität.* Bundeskriminalamt Wiesbaden, 1955. 275 pp.
4. *The Treatment of Young Offenders in Malta.* Proposals for Reform. By J. J. Cremona, Ph.D., LL.D., D.Litt., Assistant Attorney General. Malta, Giov. Muscat, 1956. 16 pp.

These four reports, three of them emanating from parts of the Commonwealth and one from Western Germany, present an interesting picture of conditions, achievements, difficulties, reform projects and hopes for the future.

The Indian survey comes from Bombay but attempts, apparently for the first time, to cover the whole of that vast country. Financed by the Central Social Welfare Board, New Delhi, and carried out by the Bureau of Delinquency Statistics and Research of the Children's Aid Society, Bombay, it is informative and competently done. To provide a sound basis for the investigation a Delinquency Research Council was established, on which among other bodies the Bombay University School of Economics and Sociology and the Tata Institute of Social Sciences were represented. The co-operation of the various State administrations was also obtained. Seven schedules on various aspects of the subject with several thousands of questions and sub-questions were sent out to the police, prisons, social services, and the other agencies concerned. The resulting survey is based on their answers which are throughout treated separately, and it is interesting to compare the different and sometimes conflicting points of view. The existing juvenile legislation of the individual states of India is briefly sketched. The influence of American literature and institutions is particularly conspicuous in the chapters on ' Control and Prevention of Delinquency ' and on the ' Juvenile or Children's Courts System '. The latter, which has a special bearing on the main theme of the present issue, traces the development of Indian juvenile courts since 1922 when the first court was established in Calcutta. Apart from the big cities, the development has been rather slow; only comparatively few states have separate juvenile courts, though apparently more possess ' adult courts functioning for the purposes of juvenile laws as juvenile courts '. With a few exceptions, social investigations by probation officers are still very rare. In a reference to the ' potentialities of the juvenile court as a preventive agency ' it is significant to find the view expressed that ' in India, because of its close judicial kinship, it would be necessary to devise a compromise solution combining the good points of the Scandinavian system and the American system, which could be introduced, not to supplant the growing juvenile court movement but to supplement and strengthen it, especially in relation to preventive work ' (p. 93). It is admitted that ' the juvenile court cannot by itself achieve much ' in the field of prevention without a system of community resources and organizations to arouse public conscience. The chapter on the

treatment of juvenile delinquency is followed by a ' Plan ' for its prevention and treatment which, among other proposals, recommends the setting up of ' Juvenile Service Bureaux ' in delinquency areas alongside with a ' Child Welfare Board System ' in rural districts. Repeatedly, the need for further research is stressed, adapted to the specific conditions of India, as ' we cannot introduce innovations . . . just because of their reported success in other countries; neither can we set aside new ideas because they may have failed to take root in social and physical environment entirely dissimilar to ours ' (p. 165).

The Report for the State of Victoria is the work of a Committee of three members, under the inspiring chairmanship of the Hon. Mr. Justice John V. Barry, Chairman of the Department of Criminology in the University of Melbourne. The Committee was asked to report on the best methods of investigating the causes and extent of juvenile delinquency in Victoria and also to submit recommendations upon measures, legislative and administrative, which ought to be taken to deal with the problem. No public sittings were held or witnesses heard. Information was mainly obtained from governmental, academic and voluntary agencies, but also from private citizens. The survey of causal factors and methods of prevention follows traditional lines and was not intended to be original. There seems to emerge hardly anything that would distinguish the position in the State of Victoria from the state of affairs and the views prevailing in Western European countries. Being the first survey of its kind in Victoria, it can, however, justly claim to be a piece of pioneering research (p. 41). One of the unusual features emerging from the statistical tables is the remarkable decline in the proportion of recidivists among juvenile delinquents, from 68 per cent. in 1946 to 18 per cent. in 1954. The juvenile courts (119 in number), whose competence seems to be slightly less extensive than that of English juvenile courts, are assisted by 300 honorary and entirely untrained probation officers and only two paid and full-time officers. There are, however, Children's Court Clinics. The Report recommends for the juvenile courts more trained magistrates, probation officers and other expert staff. In key areas, there should be ' major courts ', presided over by properly qualified magistrates. No views are expressed regarding the question of changing the age limits of criminal responsibility and juvenile court jurisdiction. There is, however, a persistent plea for more research.

The German volume is a collection of short contributions to a Conference arranged in 1954 by the Bundeskriminalamt, Wiesbaden, giving together a comprehensive picture of juvenile delinquency and the various techniques used in Western Germany for its prevention and treatment. Among the contributors are several internationally known scholars, administrators and judges, notably Professors E. Kretschmer, W. Villinger, T. Würtenberger, Dr. A. Krebs and Dr. R. Middendorff. Space does not permit a detailed review which would do justice to the high standard of the volume as a whole. Attention may be drawn, however, to two papers by experienced juvenile court judges, Dr. Potrykus and Mr. Holzschuh, which have some special bearing on the juvenile court problem. They confirm the view expressed in Professor Sieverts' article in this issue that the extension of juvenile court jurisdiction to the age of 21 has been justified in the light of practical experience.

Dr. Cremona's paper, in spite of the official position of its author, is not an official publication. The writer, Assistant Attorney and Lecturer at the Royal

University of Malta, surveys the whole treatment of young offenders under Maltese law and makes a number of useful recommendations for reform. He favours the raising of the age of criminal responsibility from 9 to 14 and the substitution of a care and protection procedure for criminal charges in the case of children. He deplores the lack of adequate institutional facilities on the island: there is only one Approved School and no Borstal institution, no probation system and no efficient after-care. With regard to the latter, the author is highly critical of the existing system of ' Conduct Certificates ' which tends to stigmatize the discharged offender. It is good to know that some of the author's recommendations are likely to become law in the near future. H. M.

Social Problems of Post War Youth

Economic Research Council (*London:* 55, *Park Lane.* 1956. *Pp.* 16. 1*s.*)

This is a useful yet at the same time rather unsatisfactory pamphlet on a subject of exceptional importance. It is useful for the statistical evidence carefully abstracted from reports dealing with employment and also criminality among the adolescent population. The object is to draw attention to the difficulties of the young unskilled school-leaver in the period before National Service. It is not enough, however, when interpreting the statistics to talk of the ' eat, drink and be merry ' philosophy of modern youth and the responsibility on society to mitigate the ill-effects of National Service. The real problem is far more difficult, both as regards the facts themselves and the social action to be taken. National Service is merely one factor, admittedly an important one, in an extremely complex situation.

The pamphlet is particularly critical of the report into the effects of National Service published in 1955 by the Ministry of Labour. This is a fair and timely criticism. Apart from the bias in the sample the nature of the interviews themselves makes it extremely doubtful whether the optimistic view of the effects of National Service described in this report has much significance. The remainder of the pamphlet is concerned with rates of wages and the shift away from skilled to unskilled employment among young wage-earners in post-war Britain, followed by an analysis of the criminal statistics and extracts from the Registrar General's Reports.

The general picture is of a decline in larceny during the years 1946–54 following an initial rise up to a peak in 1951, but of a rise in violence and sex offences. There has been an increase also among both young men and women of drink offences, suicide and attempted suicide.

' Citizens of To-morrow ', the report of the King George's Jubilee Trust, to which frequent reference is made in this pamphlet, was unfortunately not the product of a scientific enquiry. However distinguished the members of the Trust's working-parties, the collection of evidence was largely on the basis of opinion and experience. There is still a strong case for an enquiry into the social background of adolescent youth, especially of the delinquent fringe, but it will have to be done by a research team in which the social sciences and psychiatry are adequately represented. With all its faults this pamphlet of the Economic Research Council remains a disquieting document, and this is certainly the intention of its authors. John Spencer.

HOME OFFICE: Seventh Report on the Work of the Children's Department, November 1955. (London: H.M.S.O. 1955. Pp. vii + 158. 6s.)

This report of the Children's Department of the Home Office is the second to appear since the passing of the Children Act of 1948 and covers the period between 1950 and 1954. Not unnaturally the major share of the report is given to the subject of child care but in this review attention is focused mainly on juvenile delinquency.

In 1951 juvenile delinquency had reached a post-war peak and in the following years then declined rapidly. In the same period the population of the Approved Schools, with the exception of senior and intermediate schools for girls, had also declined. It seems reasonable to include among the many influences which contributed to this decline the increasing importance and use made of the child care services, though it is still too early to assess the long-term trend. Part II includes descriptions of the local delinquency campaign, the scheme of police liaison officers, attendance and detention centres, and changes in the constitution of the juvenile courts. The section on research is a great encouragement to criminologists. Research into young delinquents and their treatment has now come to stay and provides an interesting contrast to the complete absence of any reference to research into child care.

With so wide a range of material it is difficult to be selective. The lack of adequate central direction to the local delinquency campaigns was disappointing. Many local authorities took up the work with care and enthusiasm, and more could have been done by them than was actually achieved had there been more effective planning and control within the Home Office. No analysis of their work was ever published and the circular reprinted as Appendix IX is a rather weak conclusion to their business. The account of the Liverpool police liaison scheme is a useful report but it will soon be time for an independent assessment of the operation of these schemes in various places. Their extension is by no means an unmixed blessing. On the value of the new punitive methods of attendance and detention centres there has been plenty of controversy and the need for research is obvious.

Parts III and IV cover the approved schools and remand homes. There was a decline in the use made of both institutions. Twenty approved schools were closed and the average percentage use of the places in local authority remand homes, in spite of the reduced number of places available, declined from 60 per cent. in 1951 to 49 per cent. in 1954. The anxiety which these changes have created among staff has been acutely felt, almost certainly to a greater extent than the report indicates. The development and extension of classification in the approved schools is the most significant development, raising complex problems for the organization of remand homes as well as of approved schools. Although the report provides an excellent account of many improvements in methods of training it is less satisfactory as a statement of general policy. In particular some discussion of principles underlying the classification of schools would have been useful. What measure of specialization, for example, is possible or desirable in the approved school system? There are references in the report to important developments, such as the schools for intelligent senior boys or for girls requiring psychiatric treatment. Little is said, however, about the degree of specialization required in the system as a whole.

The report also contains a short and interesting chapter on child adoption,

the popularity of which may be illustrated by the increase in the total number of orders from 2,967 in 1927 to 13,001 in 1953. This is a field of activity in which much has been achieved.

JOHN SPENCER.

REVIEWS

S.O.S. JUGEND IN NOT. By K. F. Wilhelm Muller. (Ratingen bei Dusseldorf: A. Henn Verlag. 1955. Pp. 154. 3.60 Dm.)

This little book written by an experienced Guardianship and Juvenile Court Judge is intended to reach a wide public and to appeal to the conscience of parents and indeed of all adults. The numerous cases of all forms of juvenile waywardness and delinquency are not case-studies in the true sense of the word but brief sketches with an emphasis on the dramatic side which are intended to show the manifold dangers of a young generation highly susceptible to the harmful influences of a world of utter insecurity and full of strong forces competing for the souls of the young. These stories, and the book as a whole, have the purpose of bringing home to the adult reader the immense responsibilities for the way in which the young generation should go and to enlist the help of as many people as possible for the preventive and remedial work with young people. An introduction by W. Becker contains some observations on the treatment of adolescent offenders between 18 and 21 under the present German Juvenile Court Law. The Act of 1953 brought all minors up to 21 under the jurisdiction of the Juvenile Courts and leaves it, under certain statutory conditions, to the judge to apply to those over 18 either the measures applicable to juveniles or the usual penalties for adults. According to Dr. Becker the prevailing practice is disappointing. Too few of the adolescents are treated according to substantive juvenile court law. The proportion varies between 18·7 per cent. in Schleswig-Holstein and only 4·8 per cent. in Bavaria. It would be interesting to know whether in the meantime these figures have increased.

M. GRÜNHUT.

THE NEGLECTED CHILD AND THE SOCIAL SERVICES. By D. V. Donnison. (Manchester University Press, 1954. Pp. 152. 12s. 6d.)

This 150-page study is concerned with the efforts of the Social Services of Manchester and Salford to help families from which children have come into the domiciliary care of the Children's Department. The children whose histories were studied were all expected to be in care for at least six months and 118 families were used as the sample. Some were taken into care at the request of relatives no longer able to look after them; others were committed to the care of the Children's Officer by the Courts as being in need of care and protection.

The author seeks to discover what is characteristic of these families and does so by applying seven criteria of neglect which he sees as broad indicators of social

inadequacy in the parents. Examples are: (1) Visits to the family by a school welfare officer at intervals of seven days or less over a period of two months or more. (2) Desertion by either parent at any time for a period of one month or longer. (3) The presence of two or more illegitimate children in the family. The author's hypothesis is that ' none of these tests is a reliable proof of neglect if taken alone, but they do provide a fairly sound measure of neglect when combined together ' (p. 16). The largest group of families, 73 out of 118, show between one and three signs of neglect. The author does not tell us how many families out of the 73 show one sign only, and how many show more than one sign of neglect. Hence, the author's hypothesis is not clearly demonstrated to the reader. The author's opinion, based on reading the cases, is that in only eight of the families were the children well looked after before their breakdown.

A very detailed account follows of work done by the statutory and voluntary Social Services and the methods of co-operation between them. Fifty-eight of the families, besides being known to the Health and Children's Department, were also known to between four and ten other Social Services.

The author concludes that ' although the aim of all social services is to contribute to the health, happiness and unity of families, it is not the chief aim . . . ' (p. 73) of any of these services. He believes that ' the need of many of these families seems to have been for some person upon whom they could rely for continuous support and encouragement ' (p. 75). He goes on to describe the work of the Family Service Unit and to consider the achievements and limitations of its method. He concludes that some families can, others cannot respond even to this approach. The attempt is, however, worth making since it is effective in a number of families. To offer the personal influence of someone prepared to help in every way takes time and implies that one case worker can work with only a small number of families. The author points out cogently that ' the price of maintaining two children in a local authority's homes for one year is higher than the salary of one case worker ' (p. 117). He has interesting practical suggestions for implementing his recommendations. The story is made more vivid by inclusion in the appendices of four imaginary but typical case histories.

C. M. CHAPMAN.

MANUAL OF CHILD PSYCHIATRY (2nd Edition). Edited by Leonard Carmichael. (New York: John Wiley and Sons Inc. London: Chapman and Hall Ltd. 1954. Pp. ix + 1295. 96s.)

Twenty-two American authorities present their views on child psychological development, and the index of authors and subjects runs to 73 pages, in addition to the bibliography accompanying each chapter. It is, perhaps, the most thorough work of its kind and is happily constructed on the lines of genetic psychology in which physical maturation gradients are nicely interwoven. There are times, however, when the language employed is a combination of the scientifically recondite and the popular. As a source book it is of considerable value but its format leaves much to be desired. It is printed in double columns and the bibliography is in a painfully small type. As a book of reference it ought to be taken frequently from the shelf, but prospective buyers should be warned that this volume weighs exactly 3½ lbs! Excessive for a book of 2 in. by 8 in. by 6 in.

E. M.

MENTAL HEALTH AND INFANT DEVELOPMENT. Edited by Kenneth Soddy. Vol. I. Papers and Discussions. Vol. II. Case Histories. Being Proceedings of the International Seminar, World Federation of Mental Health, Chichester. (London: Routledge and Kegan Paul Ltd. 1955. Vol. I: pp. xix + 308. Vol. II: pp. v + 289. 25s. each vol.)

A number of people were concerned in planning this seminar, prominent among them Dr. Frank Fremont-Smith and Dr. J. R. Rees, and the structure of the meetings followed the modern lines of working parties dealing with specific studies illustrating certain basic issues. These were the separated babe, family phenomena, and cultural changes, and their underlying phenomena. The important contributions, apart from the editor's introduction and summing-up, come from the work of Madame Aubry, Professor Mac Calman, Margaret Mead, Rene Spitz, and Kent Zimmerman. This volume should claim the attention of all workers in child psychiatry, and students of juvenile delinquency will find much to interest them and to check up on developmental and cultural factors in social disorders of childhood.

E. M.

NEUROLOGY AND PSYCHIATRY OF CHILDHOOD. Proceedings of the Association for Research into Nervous and Mental Disease, Vol. XXXIV, 1954. (London: Bailliere, Tindall and Cox, Ltd. 1956. Pp. xiii + 504. 88s.)

Much of this volume, which has a large number of distinguished American contributors, is devoted to neurology and only Part V is confined to psychiatry. Confining this review to this final section, it must be stated that the subject matter is couched in terms of research rather than in terms of direct clinical case taking although this is present by implication. A chapter on Reading and Language Disabilities is approached neurologically, but the conclusions suggest the dominance of maturation factors. Epidemiology is again orientated in the direction of birth disorders neurologically manifest. For students of delinquency the chapter on Affective Deprivation and Institutional Placement is of value—stemming from the work of Goldfarb. It is interesting to note that the symposiasts conclude that in separation the initial distress or protest may be an indication of good emotional responsiveness. Professor Kanner, opening the discussion on childhood schizophrenia, stresses the view that genotypical determinants are not enough to establish a satisfying aetiology. The syndrome usually includes all factors which produce an adaptive pattern. Schizophrenia is indeed not a clinical entity.

The volume is of value for being couched in symposium form; it gives a picture of what physicians are thinking in the U.S.A. on some basic problems in neurology and psychiatry of childhood.

E. M.

THE ROAD TO JUSTICE. By Sir Alfred Denning. (London: Stevens and Sons Ltd. 1955. Pp. viii + 118. 10s. 6d.)

A reproach that is often levelled against English lawyers, in contradistinction to many Continental lawyers, is that they are inclined to be unduly pragmatical in their professional outlook. There is undoubtedly some truth in this charge. Whether by reason of national temperament or professional training, the English

lawyer does tend to confine himself to the practical question of what the law is, the answer to which he seeks in precedent and authority, and to leave wider questions of the relation of law to social purpose and the development of our social and legal system to the academically minded.

To such a conservative habit of mind, this book of Sir Alfred Denning provides a valuable corrective. The author is a Lord Justice of Appeal who is notable for having brought to his judgments a profound knowledge of the history and development of English law coupled with a high sense of contemporary social needs. The book is a collection of addresses given to South African Universities and to the Canadian and American Bar Associations. The slight lecture-room flavour which it felicitously retains will surely render it palatable to a wide circle of readers. It will be particularly welcomed by the adherents of the modern school of ' legal realism ', who will find in it support for their view of the function of the judiciary.

In these discourses the author points out and explains with many historical allusions and contemporary instances the necessary conditions which are to be observed in any legal system if justice is to be done—an independent and impartial judiciary giving a reasoned decision on the evidence and affording an equal opportunity to each party to present his case; a fearless yet responsible Bar; a Press that is free to report but not to prejudice a party or corrupt the public; and a respect for the fundamental personal freedoms which it should be the purpose of the law to guard and promote.

That it is not always easy even to define these freedoms is well illustrated by some interesting observations upon the right of privacy, which is recognized by the courts of the United States and Canada but not as yet by the courts of this country, and on the law relating to obscene publications. Upon this latter topical and controversial subject Sir Alfred gives uncompromising and welcome support to the view of the law expressed in Mr. Justice Stable's summing-up in *R.* v. *Martin Secker* (1954) which, it is suggested, if accepted, would achieve a right balance ' between freedom and abuse by leaving it to the good sense of right-thinking members of the community.'

Finally, in his last lecture Sir Alfred reviews several modern threats to individual freedom—the ' standard form ' of contract imposed by shipping and insurance companies and others on their customers, the ' closed shop ' imposed by trade unions upon workmen, and ' price rings ' imposed by combinations of employers upon the public. Here as elsewhere, Sir Alfred is readable and thought-provoking. All-in-all, this little volume will certainly prove suggestive and stimulating, both to the public, whom it may lead to a further study of the law under which they live, and the legal profession, to which it may bring fuller appreciation of its role and responsibility in the modern world.

P. QUASS.

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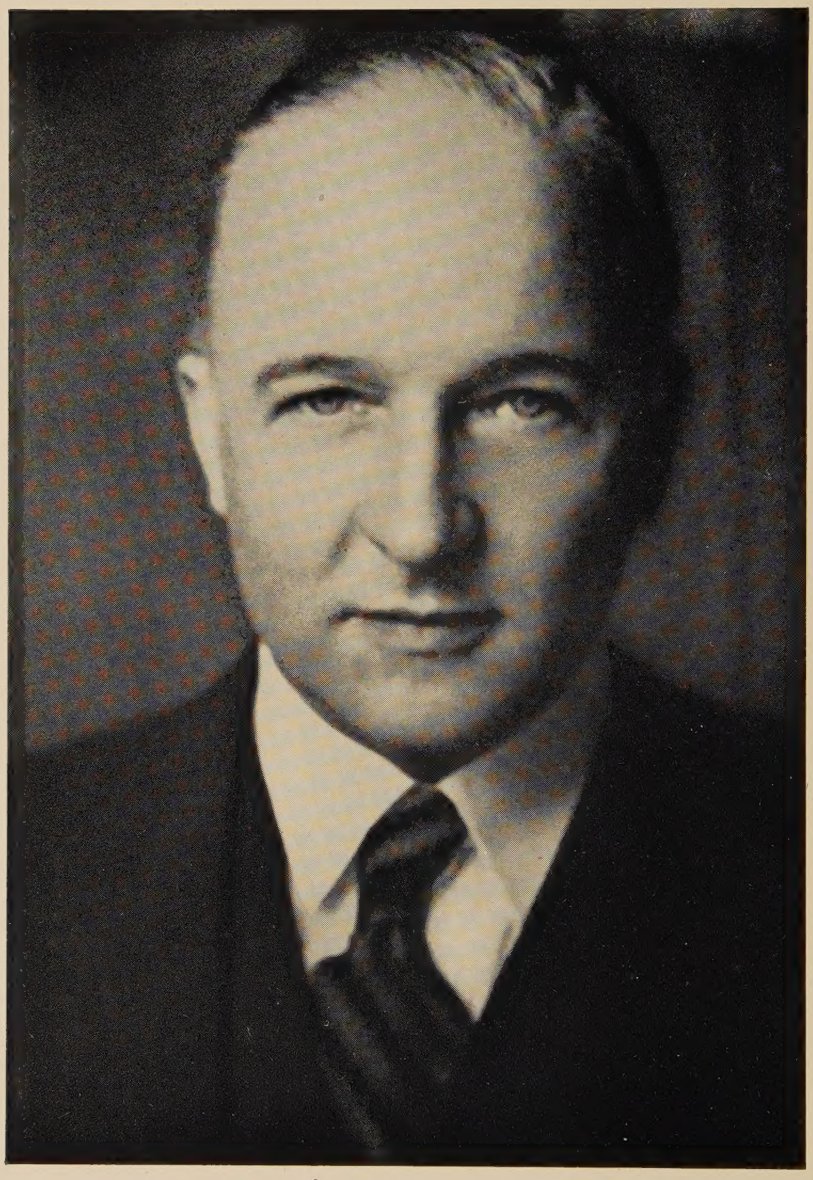

Yours sincerely

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